



Anita M. Schafer
Sr. Paralegal

Duke Energy Corporation
139 East Fourth Street, Room 2500 AT II
P.O. Box 960
Cincinnati, Ohio 45201-0960
513-419-1847
513-419-1846 fax
anita.schafer@duke-energy.com

VIA OVERNIGHT DELIVERY

March 27, 2008

Ms. Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602-0615

RECEIVED

MAR 28 2008

**PUBLIC SERVICE
COMMISSION**

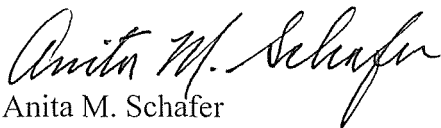
Re: Case No. 2007-00526
Hearing Data Request

Dear Ms. O'Donnell:

Enclosed please find DE-Kentucky's response to the data request made at the hearing in the above captioned case.

Please date-stamp the two extra copies of the data requests and return to me in the envelope provided. Thank you for your consideration in this matter.

Very truly yours,



Anita M. Schafer
Senior Paralegal

cc: Enclosure

VERIFICATION

State of Ohio)
)
County of Hamilton)

The undersigned, Ryan Gentil, being duly sworn, deposes and says that I am employed by the Duke Energy Shared Services as Portfolio Risk Manager; that on behalf of Duke Energy Kentucky, Inc., I have supervised the preparation of the responses to the foregoing information requests; and that the matters set forth in the foregoing response to information requests are true and accurate to the best of my knowledge, information and belief after reasonable inquiry.



Ryan Gentil

Subscribed and sworn to before me by Ryan Gentil on this 26th day of March 2008.



NOTARY PUBLIC

My Commission Expires:



ANITA M. SCHAFER
Notary Public, State of Ohio
My Commission Expires
November 4, 2009

**KyPSC Staff Hearing Data Requests
DE- Kentucky Case No. 2007-00526
Date Received: March 18, 2008
Response Due Date: April 1, 2008**

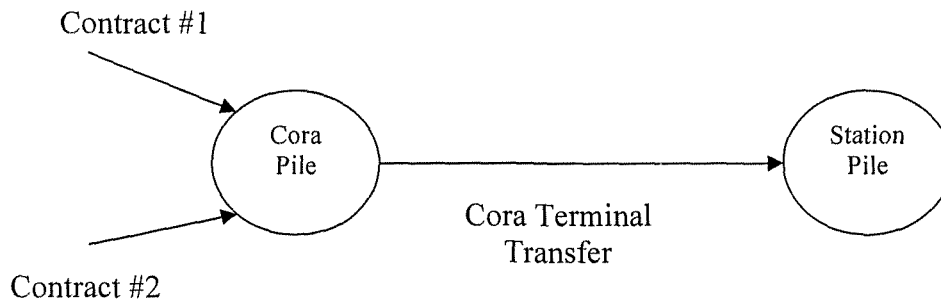
KyPSC-DR-HEARING-001

REQUEST:

Please provide the missing coal contracts as discussed in the hearing.

RESPONSE:

The “Cora Terminal Transfer” is not a contract. This is an internal transfer used to capture the movement between the Cora Terminal and the Station. The internal transfer represents movement of coal from the Cora inventory to the Station inventory.



PSEG Energy – is KyPSC-DR-Hearing-001, Attachment A.

Peabody Coal Sales – (Coalsales, LLC) –is KyPSC-DR-Hearing-001, Attachment B.

CBS&C, Inc. –is KyPSC-DR-Hearing-001, Attachment C.

PERSON RESPONSIBLE: Ryan Gentil

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PUBLIC SERVICE
COMMISSION

AVM-863

Coal Buyer:

Coal Seller:

The Cincinnati Gas and Electric Company

PSEG Energy Resources & Trade LLC

221 East Fourth Street

80 Park Plaza, T-21

Cincinnati, OH 45202

Newark, NJ 07101-1171

Attn: Confirmations

Attn: Harry Papadopoulos

Tel. 513-419-5627

Tel. 973-430-6807

Fax. 513-419-5152

Fax. 973-643-3838

Ref #:2136419, LS00656

Ref #:

Coal Supply Agreement

This Agreement, by and between The Cincinnati Gas and Electric Company, an Ohio corporation (hereinafter "Buyer"), and PSEG Energy Resources & Trade LLC (hereinafter "Seller"), establishes the terms and conditions for the sale and purchase of Coal (The "Agreement"). Seller and Buyer can be individually referred to as a "Party" or collectively as "Parties."

- 1). **Commodity:** Crushed, bituminous Coal containing no synthetic fuels, substantially free from any extraneous material and debris, with no intermediate sizes to be added or removed and otherwise meeting the Specifications of this Agreement (hereinafter "Coal" or "Commodity").
- 2). **Trade Date:** April 18, 2006
- 3). **Product:** Nymex OTC barge
- 4). **Term:** January 1, 2007 through December 31, 2007
- 5). **Quantity:** 120 Barges, 10 barges per month (approximately 186,000 tons)
- 6). **Scheduling:** Buyer will advise Seller on or before the 20th day of each calendar month preceding scheduled shipments of the number of unit trains, trucks or barges it desires to load during the succeeding calendar month to fulfill the transaction Quantity and Buyer's desired loading dates and delivery schedule ("Delivery Schedule"). Seller will advise Buyer on or before the 25th day of the month preceding shipment of its Source mine(s)/loadout(s) for the scheduled monthly shipment(s). The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule within the Nomination Period and within each month during the Nomination Period. All deliveries will occur in approximate ratable amounts over the term of a transaction. The delivery period shall begin no earlier than the first day of the delivery

month and at least seven (7) days before the end of the month. Delivery must be completed by the last day of the delivery month.

7). Nomination Period (Check One): Monthly Quarterly Other: _____

8). Source(s): Delivery shall be made F.O.B. buyer's barge at seller's delivery facility on the Ohio River between mileposts 306 and 317 or on the Big Sandy River.

9). Delivery Point (Check One): F.O.B. railcar at the Source
 F.O.B. barge at the Source
 Other: _____

10). Contract Price: \$ 53.75 per ton at Delivery Point. The price shall include all taxes, fees, and any proper charges.

11). Specifications (Check One): Per Attached Schedule 1 (Standard)
 Per Attached Schedule 2 (Periodic Performance)

Buyer may reject any Shipment falling outside of the aforementioned Specifications, shipments that may cause handling problems, or shipments that are contaminated with foreign materials with written notification to Seller. Buyer shall return Coal to Seller at Seller's cost. Seller shall make best efforts to replace the rejected Coal no later than the last calendar day of the delivery month.

12). Sampling and Analysis: Coal sampled via mechanical sampler for each Shipment shall be performed at the Delivery Point. Analysis to be performed in accordance with ASTM standards by a mutually acceptable independent commercial laboratory with the cost for such sampling and analysis to be from the Seller's account Each sample shall be divided into four (4) parts placed in separate airtight containers. One (1) part of each sample will be analyzed by the Analysis Person; one (1) part shall be retained by the Seller for a period of forty-five (45) days; one (1) part shall be retained by the Sampling Person and shipped as Buyer directs; and one (1) part shall be retained by the Sampling Person for a period of forty-five (45) days to be used for a referee analysis, if necessary. The Analysis Person shall perform a full proximate analysis on an "as-received" basis, which shall include total moisture, ash, Btu, sulfur, volatile matter, fixed carbon, and other data as required by the applicable Confirmation. At the request of either Buyer or Seller, and at the expense of the requesting Party, additional analyses may be performed. The Sampling Person shall or shall cause the results of the short proximate analysis to be reported to the Buyer and Seller, along with train I.D. number, weight and shipping data ("Shipping Report") by fax, telephone (to be confirmed promptly by fax) or other electronic means as soon as available, but in any event within forty-eight (48) hours of the completion of the loading of each Shipment. By notice to the Sampling Person within twenty-four (24) hours after delivery of the Shipping Report and in any event prior to unloading of the Coal at the destination, Buyer or Seller may object to the analysis (the "Objecting Person"), and if so, the Sampling Person shall submit the retained sample to an independent testing laboratory selected by and unaffiliated with the Objecting Person for an independent analysis. If the results of the independent analysis are within ASTM (interlaboratory) Reproducibility Limits, the original short proximate, sodium, and any other specification analysis as required in this Confirmation, as appropriate, shall control and the costs of the independent analysis shall be paid by the Objecting Person. If such results for any Specification are not within such Reproducibility Limits, the results of the independent analysis shall control and the costs of the independent analysis shall be borne by the non-Objecting Person. All analyses shall be performed in accordance with current published applicable ASTM standards.

13). Quality Adjustments:

(i) If Coal delivered under this Agreement varies from the Specifications in this Agreement, but Buyer does not exercise its rejection rights under subparagraph (ii) below, quality adjustments shall be calculated pursuant to the formulas set forth below in this Agreement. Within ten (10) days after the end of each month during the Term for this transaction, the quality adjustments for this transaction, if any, shall be netted against each other and the net quality adjustment, as appropriate, for all shipments of Coal during such month shall be determined by Seller, and Buyer shall pay Seller the net positive adjustment, if any, or Seller shall credit Buyer the net negative adjustment, if any, on the next invoice (or pay such amount to Buyer in the event no further invoices are due) in accordance with the billing and payment terms of Paragraph 17.

(ii) If any shipment of Coal triggers any of the Rejection Limits specified in this Agreement for a transaction (a "Non-Conforming Shipment"), Buyer shall have the option, exercisable by notice to Seller within 24 hours of Buyer's receipt of Seller's sample of the Coal provided pursuant to Paragraph 12 of either (i) rejecting such Non-Conforming Shipment at the Delivery Point or in route, but prior to unloading from Transporter's equipment or (ii) accepting any Non-Conforming Shipment with either a Contract Price adjustment agreed to between Seller and Buyer in a commercially reasonable manner, or absent such agreement, the quality adjustment determined pursuant to subparagraph (i) above. If Buyer fails timely to exercise its rejection rights hereunder as to a shipment, Buyer shall be deemed to have waived such rights with respect to that shipment only. If Buyer timely rejects the Non-Conforming Shipment, Seller shall be responsible for promptly transporting the rejected Coal to an alternative destination determined by Seller and, if applicable, promptly unloading such Coal, and shall reimburse Buyer for all reasonable costs and expenses associated with the transportation, storage, handling and removal of the Non-Conforming Shipment. Seller shall, at Buyer's request, use commercially reasonable efforts to replace the rejected Coal as soon as possible, provided that Buyer gives written notice to Seller of Buyer's desire for replacement Coal within 48 hours after rejection of the Non-Conforming Shipment. Notwithstanding anything to the contrary set forth herein, any claim by Buyer with respect to Coal sold hereunder shall be deemed waived by Buyer unless submitted to Seller in writing within ten (10) days after delivery of such Coal.

BTU Price Adjustment: $(\$/\text{ton}) \times [(\text{Actual Btu/lb} - \text{Guaranteed Btu/lb}) / \text{Guaranteed Btu/lb}]$

There will be a discount of \$.004 per mmBtu for any delivery to a terminal on the Big Sandy River.

Price adjustments shall be made to the nearest \$0.001.

14). (a) Weight Determination: The weight of each barge Shipment shall be determined by draft survey at barge loading as performed by an independent draft surveyor appointed by the Seller with the costs from Seller's account. Such analysis shall be final and binding and shall govern for payment.

General Terms and Conditions

15). Force Majeure: If a Party is delayed in or prevented from performing, in whole or in part, any of its obligations due to acts of God, war, riots, civil insurrection, acts of the public enemy, strikes, lockouts, natural disasters, the inability to receive or store Coal due to equipment

failure, power generating shutdowns caused by equipment failure resulting from the enforcement of any local, state, or federal environmental laws and/or regulations, or other causes that are beyond the reasonable control and without the fault or negligence of the Party affected thereby (such events being referred to herein as "Force Majeure"), and such Party gives oral notice and full details of the Force Majeure to the other Party as soon as reasonably practicable after the occurrence of the event of Force Majeure (such notice to be confirmed in writing), then during the pendency of such Force Majeure but for no longer period, the obligations of the Parties (other than obligations to make payments then due) shall be suspended to the extent required by the event. The Party affected by the Force Majeure shall remedy the Force Majeure with all reasonable dispatch and will keep the other Party advised as to the continuance of the Force Majeure event; provided however, that this provision shall not require Seller to deliver, or Buyer to receive, the Coal at points other than the Delivery Point for the authorized Source including allowable substitutions under the transaction. A change in market conditions including the ability of Seller to sell Coal at a higher price, or Buyer or Buyer's customer to buy Coal at a lower price, whether or not foreseeable shall not be considered a Force Majeure event. If an event of complete or partial Force Majeure persists for a continuous period of sixty (60) days, then the Party not claiming Force Majeure shall have the option, upon three (3) days' prior written notice, to terminate this transaction to the extent affected and the associated obligations of the Parties (other than payment obligations for prior performance thereunder). In the event of a Force Majeure, delivery of the affected Quantity of Coal shall not be made up except by mutual agreement of the Buyer and Seller. If Seller claims Force Majeure and is unable to meet all of its sales obligations under this Agreement and any other of its Coal sales agreements involving Coal of a similar type and quality as the Coal, or if Buyer claims Force Majeure and is unable to meet all of its purchase obligations under this Agreement and any other of its Coal purchase agreements involving Coal of a similar type and quality as the Coal, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated on a pro rata basis among the affected transaction(s) and such other Coal supply or purchase agreements involving Coal of the same type and quality as the Coal, to the extent contractually permitted by such transaction and agreements.

16). Damages:

(a) Unless excused by Force Majeure or the Buyer's failure to perform, if Seller fails to deliver all or part of the Quantity of the Coal to be delivered hereunder pursuant to the Delivery Schedule, Seller shall pay to the Buyer for each ton of deficiency (the "Deficiency") an amount equal to the positive difference, if any, obtained by subtracting the Price for the Deficiency from the Replacement Price. "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases substitute Coal for the Deficiency (plus additional transportation charges, if any, incurred by Buyer as a result of taking delivery of substitute Coal at a location other than the Delivery Point) or, absent such a purchase, the market price for such Quantity of Coal FOB the Delivery Point, as determined by Buyer in a commercially reasonable manner. It is expressly agreed that Buyer shall not be required to enter into a replacement transaction in order to determine the Replacement Price.

(b) Unless excused by Force Majeure or the Seller's failure to perform, if Buyer fails to accept all or part of the Quantity of the Coal to be delivered hereunder pursuant to the Delivery Schedule, Buyer shall pay to the Seller for each ton of deficiency (the "Deficiency") an amount equal to the positive difference, if any, obtained by subtracting the Sales Price from the Price for the Deficiency. "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells (if at all) the Deficiency (plus additional transportation charges, if any, incurred by Seller as a result of delivering Coal to a location other than the Delivery Point) or, absent such

resale, the market price for such Quantity of Coal FOB the Delivery Point, as determined by Seller in a commercially reasonable manner. It is expressly agreed that Seller shall not be required to enter into a replacement transaction in order to determine the Sales Price.

(c) Each Party hereby stipulates that the payment obligations set forth in this Paragraph 16 are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages and each Party hereby waives the right to contest such payments as an unreasonable penalty or otherwise. The remedy set forth in this Section 16 shall be sole and exclusive remedy of the aggrieved Party for the failure of the other to deliver or accept, as the case may be, the quantity of Coal specified herein, and all other damages and remedies are hereby waived as to such failure(s), except as set forth in Paragraph 25 below.

17). Payment: No later than ten (10) days after receipt of a Party's invoice (or if such day is not a Business Day, the immediately following Business Day) or the 25th of month, whichever is later, the receiving Party shall pay, by electronic transfer in immediately available United States fund, the amount set forth on such invoice along with the necessary information enabling reconciliation to the relevant shipment to the applicable payment address below:

CG&E Billing Address:

139 E. Fourth Street, EA 502
Cincinnati, OH 45201-0960
Attn: Supervisor, Billing
Fax: (513) 419-5790

CG&E Payment Address:

Bank Name: PNC Bank
Account Number: 4005488605
ABA Number: 04000398
Phone Number:

Counterparty Billing Address:

PSEG Energy Resources & Trade LLC
80 Park Plaza, T-19
Newark, NJ 07102
Attn: Settlements Group
Fax: 973-623-0328

Counterparty Payment Address:

Bank Name: JPMorgan Chase Bank
ABA Number: 021000021
Account Number: 9102641827
Acct. Name: PSEG Energy Resources & Trade LLC

18). Bankruptcy: In the event either party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general

arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), or (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, (collectively, 'Bankruptcy Proceedings'), then the other party may, at its option and in its sole discretion anytime thereafter upon written notice, terminate this agreement in whole or in part in accordance with the procedure set forth in Paragraph 22.

19). **Material Adverse Change:** A Material Adverse Change occurs with respect to either Party or either Party's credit support provider if one exists, if (i) there is any material change in the condition (financial or otherwise), net worth, assets, properties or operations, or in economic conditions, which, taken as a whole, can reasonably be anticipated to impair the ability of such Party or such Party's credit support provider to fulfill its obligations; or (ii) there is reasonable grounds to believe that the creditworthiness of such Party has become unsatisfactory or its ability to perform under this Agreement has been materially impaired.

20). **Adequate Assurances:** If a Material Adverse Change has occurred, the Party seeking assurance ('Requesting Party') may make a written request of the other Party ('Providing Party') to provide Adequate Assurance in an amount determined in a commercially reasonable manner, and in a form acceptable to the Requesting Party. Upon receipt of the request, the Providing Party shall have one (1) Business Day to provide such Adequate Assurances. If not provided, the Requesting Party will be entitled to the remedies set forth below. If the Providing Party provides Adequate Assurance to the Requesting Party within one (1) Business Day, it is understood that the Providing Party shall not in fact have defaulted under this Agreement by incurring a Material Adverse Change. Adequate Assurance is defined as (i) cash and/or cash prepayment (ii) letters of credit, (iii) a corporate guaranty from a creditworthy entity satisfactory to the Requesting Party or (iv) such other form of security acceptable to the Requesting Party. Notwithstanding the above, neither Party shall be required to make any disclosure that would conflict with the disclosure nor other requirements set forth by the Federal Securities Exchange Commission.

21). **Event of Default:** An Event of Default ('Event of Default') with respect to a Party (the 'Defaulting Party') shall mean: (i) the failure of the Defaulting Party to pay (including but not limited to liquidated damages resulting from a failure to deliver) when due any required payment and such failure is not remedied within three (3) Business Days after written notice; (ii) the failure of the Defaulting Party to comply with its other material obligations under this Agreement and such failure is not remedied within three (3) Business Days after written notice; (iii) any representation or warranty made by the Defaulting Party herein shall prove to be false or misleading in any material respect when made or deemed to be repeated; (iv) a Party or its credit support provider is subject to a Bankruptcy Proceeding; or (v) a Party suffers a Material Adverse Change and fails to provide Adequate Assurances.

22). **Early Termination:** Upon the occurrence and during the continuance of an Event of Default, as to the Defaulting Party, the other Party (the "Non-Defaulting Party") may, in its sole discretion: (a) accelerate and liquidate the Parties' respective obligations by establishing and notifying the Defaulting Party of an early termination date (which shall be no earlier than the date such written notice is received and no later than twenty (20) days after the date of such notice) on which this and any other agreement between the Parties shall terminate ('Early Termination Date'); and/or (b) withhold any payments due to the Defaulting Party until such Event of Default is cured; and/or (c) suspend performance of its obligations until such Event of Default is cured.

23). **Early Termination Payment:** If an Early Termination Date is established, the Non-Defaulting Party shall in good faith calculate its Gains (Gains means an amount equal to the present value of the economic benefit, if any, exclusive of Costs, to it resulting from the termination of its obligations with respect to a terminated transaction, determined in a commercially reasonable manner) or Losses (Losses means an amount equal to the present value of the economic loss, if any, exclusive of Costs to it resulting from the termination of its obligations with respect to a terminated transaction, determined in a commercially reasonable manner), and Costs (Costs means any brokerage fees, legal costs and expenses, commissions and other transactional costs and expenses reasonably incurred either by the Non-Defaulting Party as a result of terminating any hedges or other risk management contracts and/or entering into new arrangements in order to replace the early terminated transaction(s), resulting from the termination of this and any other agreement between the Parties, aggregate such Gains or Losses, and Costs, and then notify the Defaulting Party of the net amount owed or owing. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within two (2) Business Days of its receipt of such notice pay the net amount to the Non-Defaulting Party, including interest at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from such early termination, the Non-Defaulting Party shall pay the net amount to the Defaulting Party in accordance with Paragraph 17 hereof. The Non-Defaulting Party shall determine its Gains or Losses, and Costs, as of the Early Termination Date, or, if that is not possible, at the earliest date thereafter that is reasonably possible.

24). **Netting:** If the Parties are required to pay any amount on the same day or in the same month under this or any other Coal Agreement, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount may pay to the other Party the difference between the amounts owed.

25). **(A) LIMITATION OF LIABILITY:** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NO WAIVER OF REMEDIES OR DAMAGES HEREIN SHALL APPLY TO CLAIMS OF ANTICIPATORY REPUDIATION OR REMEDIES THEREOF PROVIDED FOR BY LAW EXCEPT THAT NEITHER SELLER NOR BUYER SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES, LOST PROFITS, OR BUSINESS INTERRUPTION DAMAGES, WHETHER IN EQUITY OR BY STATUTE, IN TORT, OR IN CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION,

THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

(B) Duty to Mitigate: Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement except that neither Party shall be required to enter into a replacement transaction as provided under this Agreement.

26). Title/ Risk of Loss: Seller warrants good title to all Coal delivered hereunder, free and clear of all claims and encumbrance. Title and risk of loss shall pass to the Buyer upon delivery at the Delivery Point. Seller and Buyer shall each indemnify, defend and hold harmless the other Party from any claims arising from failure of title or loss of the Coal or otherwise while title to and risk of loss of the Coal is vested in the indemnifying Party.

27). Assignment: Neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either party may, without the need to consent from the other party, (a) transfer, sell, pledge, encumber, or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements (without relieving itself from liability hereunder); (b) transfer or assign this Agreement to an Affiliate of at least equal creditworthiness to such party or (c) transfer or assign this Agreement to any person or entity of at least equal creditworthiness succeeding to all or substantially all of the assets of such party; *provided however*, that in each such case any such assignee or transferee shall agree in writing to be bound by terms and conditions hereof. "Affiliate" means, with respect to any person, any other person (other than an individual) that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of 50% or more of the outstanding capital stock or other equity interests having ordinary voting power.

28). Entire Agreement: This Agreement is the final and entire agreement between the parties. No modification or amendment of this agreement shall be effective or binding unless set forth in writing signed by both parties.

29). No Waiver: Waiver of any breach of the Agreement shall not be construed as a waiver of any other breach.

30). Governing Law: This Agreement shall be construed in accordance with and governed by the laws of the State of New York, including without limitation the Uniform Commercial Code, without giving effect to the doctrine of conflict of laws and any dispute or claim arising hereunder shall be litigated in the United States District Courts located in the cities of Cincinnati, Ohio, Newark, New Jersey, New York, New York or Wilmington, Delaware, but in the event that the Parties determine in good faith that jurisdiction does not lay with such courts or that such courts refuse to exercise jurisdiction or venue over the Parties or any claims made pursuant to this

Agreement, then the Parties agree to submit to the exclusive jurisdiction of the state courts in those cities

31). **Confidentiality:** Each party hereby acknowledges that this Agreement contains confidential information that may place such a party at a competitive disadvantage if disclosed to the public. Therefore, the terms of this Agreement shall be preserved as confidential by the parties, except to the extent disclosure may be required by law, regulation or judicial or administrative order, and the parties shall employ reasonable means to effectuate such confidentiality. Notwithstanding anything to the contrary set forth herein, the obligations of confidentiality contained herein shall not apply to the federal tax structure and federal tax treatment of the Proposed Transaction, and each party hereto (and any of its Representatives) may disclose to any and all persons, without limitation of any kind, the federal tax structure and federal tax treatment of the Proposed Transaction. The preceding sentence is intended to cause the Proposed Transaction not to be treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the United States Treasury Regulations promulgated under Section 6011 of the United States Internal Revenue Code of 1986, as amended, and shall be construed in a manner consistent with such purpose.

32). **Notices:** Notices under this Agreement shall be given in writing via facsimile or by letter at the address shown on the first page of this Agreement and shall be effective when received. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered.

33). **Limitation on warranty:** Except as expressly set forth herein, Seller expressly disclaims any other representations or warranties, written or oral, express or implied, including merchantability, or fitness for any particular purpose.

34). **Recording:** Each Party hereby consents to recording of conversations of its trading, marketing, and scheduling personnel without any further notice.

35). The Parties agree to work toward finalizing a Master Coal Agreement.

36). **Forward Contract:** The Parties agree that this transaction constitutes a "forward contract" and that the Parties shall be "forward contract merchants" within the meaning of the United States Bankruptcy Code.

37). **Set-off:** Any amount payable to one Party (the "Payee") by the other Party, (the "Payer") under Paragraph 23, in circumstances where there is a Defaulting Party in the case where an Event of Default under Paragraph 21 has occurred, will, at the option of the Party other than the Defaulting Party (the "Non-Defaulting Party") (and without prior notice to the Defaulting Party), be reduced by its set-off against any amount(s) (the "Other Agreement Amount") payable (whether at such time or in the future or upon the occurrence of a contingency) by the Payee to the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement(s) between the Payee and the Payer or instrument(s) or undertaking(s) issued or executed by one Party to, or in favor of, the other Party (and the Other Agreement Amount will be discharged promptly and in all respects to the extent it is so set-off). The Non-Defaulting Party will give notice to the other Party of any set-off effected under this Paragraph 37. If an obligation is unascertained, the Non-Defaulting Party may in good faith estimate that

obligation and set-off in respect of the estimate, subject to the relevant Party accounting to the other Party when the obligation is ascertained. Nothing in this Paragraph 37 shall be effective to create a charge or other security interest. This Paragraph 37 shall be without prejudice and in addition to any right of set-off, combination or accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

38). **Taxes:** Seller is liable for and shall pay, or cause to be paid, or reimburse Buyer if Buyer has paid, all taxes applicable to this transaction arising prior to the Delivery Point, including any taxes imposed or collected by a taxing authority with jurisdiction over Seller. If Buyer is required to remit such tax, the amount shall be deducted from any sums due to Seller. Seller shall indemnify, defend and hold harmless Buyer from any claims for such taxes. Buyer is liable for and shall pay, cause to be paid, or reimburse Seller if Seller has paid, all taxes applicable to this transaction arising at and, from the Delivery Point, including any taxes imposed or collected by a taxing authority with jurisdiction over Buyer. Buyer shall indemnify defend and hold harmless Seller from any claims for such taxes. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with obtaining any exemption from or reduction of any tax. Each Party shall use reasonable efforts to administer this Agreement and implement the provisions in accordance with the intent to minimize taxes.

39). **Compliance with Laws:** Buyer and Seller agree to comply with all federal, state, and local laws, orders, rules, regulations, and ordinances which are applicable to Buyer's or Seller's performance of its respective obligations under this Agreement.

40). **Definitions:** The following definitions and any terms defined internally in this Agreement shall apply to all notices and communications made pursuant to the Agreement.

"ASTM" means the American Society for Testing and Materials.

"Analysis Person" means the mutually acceptable independent commercial laboratory assigned personnel who will perform, or cause to be performed, analysis of the Coal in accordance with ASTM standards for Coal

"Business Day" means a day on which Federal Reserve member banks in New York City are open for business between 8:00 a.m. and 5:00 p.m. local time for each Party's principal place of business.

"Interest Rate" means, for any date, the Federal Funds Effective Rate as from time to time in effect; provided, the Interest Rate shall never exceed the maximum lawful rate permitted by applicable law. 'Federal Funds Effective Rate' shall mean, for the relevant determination date the rate opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

"Rejection Limits" means the quality characteristics for the Coal pursuant to a transaction as specified in this Agreement that give rise to a rejection right of Buyer pursuant to Paragraph (13).

"Sampling Person" shall be the mutually acceptable independent commercial laboratory selected by Buyer and Seller for sampling and analysis purposes.

'Specifications' means the quality characteristics for the Coal subject to a transaction on an "as received" basis, using ASTM standards, specified in this Agreement.

'Transporter' means the entity or entities, if any, transporting the Coal on behalf of Seller to and at the Delivery Point or on behalf of Buyer or Buyer's designee from the Delivery Point.

THE PARTIES, BY THEIR AUTHORIZED AGENTS, HEREBY EXECUTE THIS COAL SUPPLY AGREEMENT WHICH SHALL BE EFFECTIVE ON THE DATE FIRST ABOVE WRITTEN. FAILURE TO OBJECT WITHIN THREE (3) BUSINESS DAYS OF RECEIPT OF THIS AGREEMENT SHALL CONSTITUTE ACCEPTANCE.

THE CINCINNATI GAS & ELECTRIC COMPANY

PSEG ENERGY RESOURCES & TRADE LLC

BY: [Signature]

[Signature]

TITLE: Plant Manager

Robert O. Bocoock
TITLE: Manager - ER&T Administration

DATE: 4/19/06

DATE: 4/21/06

**Schedule I
 Standard to Confirmation: Specifications**

NYMEX OTC Product Specifications

The Coal delivered hereunder shall conform to the following Specifications on an "as received" basis:

<u>Specification</u>	<u>Shipment Typical Quality (Barge / Unit Train)</u>	<u>Shipment Rejection Limits (Barge / Unit Train)</u>
BTU/LB.	12,000 BTU	< 11,750 BTU
MOISTURE	10.00 %	> 10.00 %
ASH	13.50 %	> 13.50 %
SULFUR	1.00 %	> 1.05 %
SULFUR DIOXIDE (SO ₂)	<u> n/a </u> lb./MMBTU	> <u> n/a </u> lb./MMBTU
VOLATILE	30.00 %	< 30.00 %
Size (2" x 0"):		
-- Top size (inches)*	≤ 3 "	> <u> n/a </u> "
-- Fines (% by wgt)		
Passing ¼" screen	< 55.00 %	> 55.00 %
GRINDABILITY (HGI)	41	< 38
<u>ASH FUSION TEMPERATURE (°F) (ASTM D1857)</u>		
<u>REDUCING ATMOSPHERE</u>		
Initial Deformation	<u> n/a </u>	min. <u> n/a </u>
Softening (H=W)	<u> n/a </u>	min. <u> n/a </u>
Softening (H=½W)	<u> n/a </u>	min. <u> n/a </u>
Fluid	<u> n/a </u>	min. <u> n/a </u>

* All the Coal will be such size that it will pass through a screen having square perforations three (3) inches in diameter, but shall not contain more than 55 percent (55.0%) by weight of Coal that will pass through a screen having square perforations one-quarter (¼) of an inch in diameter.

Note: As used herein > means greater than and < means less than.

Delivery Point: The delivery point will be F.O.B. barge at a delivery facility on the Ohio River between milepost 306 and 317 or on the Big Sandy River.

CORP. RECORD #

04020490

NS
11/10/07

<u>Coal Buyer:</u>	<u>Coal Seller:</u>
<u>Counterparty Name</u>	<u>Counterparty Name</u>
The Union Light, Heat and Power Company	COALSALES, LLC
139 E. Fourth Street BA606	701 Market St
Cincinnati, Ohio 45202	St. Louis, MO 63101-1826
Attn: Kim Lubrecht	Attn: Creston Ragan
Tel. 513-419-5302	Tel. 314-342-7765
Fax. 513-419-5840	Fax. 314-342-7529
Ref #: <u>HC 10451E</u>	Ref #: _____

Coal Supply Agreement

This Coal Supply Agreement ("Agreement"), by and between COALSALES, LLC, a Delaware limited liability company (hereinafter "Seller"), and The Union Light Heat and Power Company, a Kentucky Corporation (hereinafter "Buyer"), effective December 20, 2005 ("Effective Date") establishes the terms and conditions for the sale and purchase of Coal (The "Agreement"). Seller and Buyer can be individually referred to as a "Party" or collectively as "Parties."

- 1). **Commodity:** Crushed, bituminous Coal containing no synthetic fuels, substantially free from any extraneous material and debris, with no intermediate sizes to be added or removed and otherwise meeting the Specifications of this Agreement (hereinafter "Coal" or "Commodity").
- 2). **2" X 0" ILB 12,100 Btu, 5.0 #SO2**
- 3). **Term:** January 1, 2006 through and including December 31, 2008, unless terminated as provided for herein
- 4). **Quantity (in tons):**

2006	700,000
2007	700,000
2008	300,000

Seller and Tyrone Synfuel LP ("Tyrone") will enter into a Coal Supply Agreement ("Tyrone Agreement"). Quantity shall be ratable throughout each calendar year of the term of this Agreement. Tyrone and Seller may enter into purchase order(s) pursuant to which Tyrone will purchase coal from Seller that would otherwise be purchased by Buyer pursuant to this Agreement

that corresponds to a particular Tyrone purchase order ("Corresponding Tyrone Purchase Order"). Seller acknowledges and agrees that any coal that Tyrone purchases pursuant to a Corresponding Tyrone Purchase Order shall be credited towards the satisfaction of Buyer's obligation to purchase coal and Seller's obligation to deliver coal under this Agreement, to the same extent as if Buyer had purchased such coal from Seller and Seller had delivered coal to Buyer under this Agreement. In no event shall Seller's obligation to deliver the quantity of coal under the Tyrone Agreement and this Agreement exceed the annual Quantity set forth in paragraph 4 above. The Corresponding Tyrone Purchase Order and Tyrone Agreement shall govern such transaction between Seller and Tyrone. Seller further acknowledges that Buyer shall have no obligations under this Agreement or any purchase order with respect to any coal that Tyrone purchases or agrees to purchase, and agrees that Seller shall look solely to Tyrone for the payment for, and for the performance of any obligations with respect to, any coal that Tyrone purchases or agrees to purchase from Seller pursuant to the Tyrone Agreement or any Tyrone Purchase Order.

Buyer agrees that any coal that Tyrone agrees to purchase pursuant to a Tyrone Purchase Order that corresponds to this Agreement that is shipped for delivery to Buyer's East Bend facility after the date on which the Synfuel Sales Agreement dated March 11, 2004 between Tyrone and Buyer, shall be purchased by Buyer pursuant to this Agreement.

5). Scheduling: Buyer will advise Seller on or before the 15th day of each calendar month preceding scheduled shipments of the number of barges it desires to load during the succeeding calendar month to fulfill the transaction Quantity and Buyer's desired loading dates and delivery schedule ("Delivery Schedule"). Seller will advise Buyer on or before the 25th day of the month preceding shipment of its Source mine(s)/loadout(s) for the scheduled monthly shipment(s). The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule within the Nomination Period and within each month during the Nomination Period. All deliveries will occur in approximate monthly ratable amounts throughout each calendar year during the term of Agreement. The delivery period shall begin no earlier than the first day of the delivery month and at least seven (7) days before the end of the month. Delivery must be completed by the last day of the delivery month.

6). Nomination Period Monthly

7). Source(s):

2006 -2007 approved Sources:

Mine: Arclar (surface and underground mines)
Mine Operating Co.: Arclar Coal Company L.L.C.
Mine State: Illinois
Mine County: Saline and/or Gallatin
Delivery Point: M.P. 858.3 on the Ohio River- Power Dock or
M.P. 871.3 on the Ohio River- Caseyville

Mine: Dodge Hill
Mine Operating Co.: Dodge Hill Coal Company L.L.C.
Mine State: Kentucky
Mine County: Union
Delivery Point: M.P. 870.1 on the Ohio River- Dekoven or
M.P. 871.3 on the Ohio River- Caseyville

Mine: Highland
Mine Operating Co.: Highland Operating Company

Mine State: Kentucky
Mine County: Henderson/Union
Delivery Point: M.P. 842.9 on the Ohio River- Uniontown

Mine: Somerville
Mine Operating Co.: Black Beauty Coal Company
Mine State: Indiana
Mine County: Gibson
Delivery Point: M.P. 784.0 on the Ohio River- Evansville Terminal

Mine: Dyson Creek
Mine Operating Co.: Ohio County Coal
Mine State: Kentucky
Mine County: Webster
Delivery Point: M.P. 871.3 on the Ohio River- Caseyville

2008 Approved Sources:

Mine: Arclar (surface and underground mines)
Mine Operating Co.: Arclar Coal Company L.L.C.
Mine State: Illinois
Mine County: Saline and/or Gallatin
Delivery Point: M.P. 858.3 on the Ohio River- Power Dock or
M.P. 871.3 on the Ohio River- Caseyville

Mine: Dyson Creek
Mine Operating Co.: Ohio County Coal
Mine State: Kentucky
Mine County: Webster
Delivery Point: M.P. 871.3 on the Ohio River- Caseyville

This Agreement is subject to Buyer conducting a ten (10) barge test burn of each approved sources with the exception of Arclar and Dodge Hill. In the event that Buyer determines that a Source is unacceptable to Buyer using Buyer's reasonable discretion, such Source shall be removed from the Approved Source(s). Seller shall not supply coal to Buyer pursuant to this Agreement from any other source unless Buyer shall give its prior written consent, which shall not be unreasonably withheld.

8). Delivery Points: F.O.B. barge @ the mile post for the appropriate Source referenced in Section 7 above.

9). Contract Price: Prices below are dollars per ton f.o.b. barge at Delivery Point. Price shall include all taxes, fees and proper charges, and shall be subject to quality adjustments as provided for in Section 12 herein. Prices, however, are not inclusive of harbor switching and fleeting charges which shall be the responsibility of Buyer.

<u>CY</u>	<u>\$/ton</u>	
2006	\$37.50	—
2007	\$38.44	—
2008	\$39.40	—

(Buyer will be kept whole on the transportation differential based on the transportation rate out of Power Dock)

10). Specifications: Per Attached Schedule 1 (Standard)

Buyer may reject any Shipment falling outside of the aforementioned Rejection Specifications, shipments that may cause handling problems or shipments that are contaminated with foreign materials with written notification to Seller. Buyer shall return Coal to Seller at Seller's cost. Seller shall make reasonable efforts to replace the rejected Coal no later than the last calendar day of the delivery month.

11). Sampling and Analysis: Seller shall sample and analyze Commodity at Delivery Point at its expense. Sampling shall be carried out following the American Society of Testing and Materials (ASTM) standard, as set forth in ASTM standard D2234 (Type I, condition C, Part-Stream Cut). Analysis is to be done in accordance with applicable ASTM standards. Such analysis shall be final and binding and shall govern for payment. Seller shall provide analysis to Buyer within 48 hours of loading Commodity into the barge except for weekends or holidays in which analysis will be provided by the second business day thereafter.

Seller shall make available sample splits and a report of each sample's quality for Buyer upon request. Buyer, at its expense, may make arrangements to pick up samples. Seller shall retain, for a period of 60 days from the loading date, sample splits taken in accordance with the provisions of this Agreement for use by Buyer and the independent laboratory specified below.

In the event of a disagreement over Commodity analysis and upon Buyer and Seller selecting a mutually agreed upon independent laboratory, Seller shall provide sample splits to the independent laboratory for analysis. Such analysis shall be accepted as the quality of Commodity received. The cost of the independent analysis shall be equally shared between Buyer and Seller.

12). Adjustments:

(a) Quality Adjustments:

BTU Premium/Penalty Price Adjustment:

$\$/\text{ton} = (\text{Monthly Weighted Average Actual Btu/lb} - \text{Monthly Weighted Average Guaranteed Btu/lb}) \times \text{Contract Price} / \text{Monthly Weighted Average Guaranteed Btu/lb}$

SO2 Premium/Penalty Price Adjustment:

The contracted SO2 content shall be 5.0 lbs. SO2 per million Btu on a monthly weighted average basis. SO2 Price adjustments shall not apply until the monthly weighted average SO2 falls outside the deadband of 4.80 lbs. SO2 and 5.20 lbs. SO2.

For purposes of this Agreement, a lb. of SO2 shall equal $\frac{\text{AR } \$\% \times 20,000}{\text{AR Btu/lb}}$

Should the monthly weighted average SO2 of the Commodity fall outside the deadband, the Contract Price will be adjusted, on a monthly basis, to reflect actual SO2 value received according to the following formula:

$\$/\text{ton} = ((5.0 \text{ lbs SO}_2/\text{mmbtu} - \text{Monthly Weighted Average Actual lbs. SO}_2/\text{mmbtu}) \times \text{Monthly Weighted Average Actual Btu/lb}) \times ((\text{Spot Price of SO}_2 \text{ Emission Allowances} \times .08) + \$85) / 1,000,000$

Where: Spot price of SO₂ Emission Allowances for any given delivery month means the 3 days average SO₂ Price of allowances expressed in dollars per ton of SO₂ in the table entitled "Daily Market Assessments, SO₂ Allowances, Price for current vintage year" published in Energy Argus Air Daily, or its successor publication, as published on the 3rd, 4th and 5th business days of the subsequent month (e.g., spot price for allowances for January 2006 would be calculated by using an average of the daily market assessment price for the 2006 vintage year published in Energy Argus Air Daily on February 3rd, 6th and 7th.)

Ash Premium/Penalty Price Adjustment:

$\$/\text{ton} = (\text{Monthly Weighted Average Guaranteed Ash \%} - \text{Monthly Weighted Average Actual Ash \%}) \times \0.50

For illustrative purposes, should the Monthly Weighted Average Actual Ash % equal 9.0% in a given month, the ash premium for the month would be \$.50/ton calculated as follows: $[(10.0\% \text{ MWAG} - 9.0\% \text{ MWAA}) \times \$0.50]$.

Price adjustments shall be made to the nearest \$0.001 and calculated on a monthly weighted average.

(b) **Price Adjustment for Changes in Law:** Buyer and Seller agree that if any federal, state, or local governmental authority, subsequent to January 14, 2005, (a) enacts, promulgates or otherwise makes effective any new statute ordinance, regulation or rule, including, but not limited to, any tax mandate, or (b) amends, modifies, or changes in any way the text, interpretation or application of any existing statute, ordinance, regulation or rule including, but not limited to, any tax mandate relative to Seller's performance of this Agreement (collectively referred to herein as "Change in Laws" (but in either case not including any statute, ordinance, regulation, rule, or other governmental mandate existing as of January 14, 2005 that has a scheduled modification or termination date), and if such Change in Laws directly or indirectly increase(s) or decreases Seller's cost of performance of this Agreement then the current selling price shall be adjusted upward or downward by the amount of such change on the effective date such change occurs. Buyer shall have the right to audit Seller's books and records to determine the amount of any upward or downward price adjustment under this section.

(c) **Price Adjustment for Escalation:** The Base Price shall be adjusted according to the price adjustment provisions in this Agreement (rounded to the nearest hundredth) and shall be referred to herein as the "Adjusted Base Price."

The Base Price per ton shall be increased or decreased for each percentage point of change, or proportionately for fractional parts of a percentage point of change, to reflect changes in the following indices. The Base Price will be allocated per the index weights detailed below. Changes shall become effective quarterly as of January 1, April 1, July 1, and October 1 of each year, beginning April 1, 2006, and shall be based upon the preliminary indices for November,

February, May and August, respectively. The index base and base amounts shall be the following:

	<u>Index Weight</u>	<u>Index Base</u>	
CPI(W) (BLS Series Id cuur0000sa0)	35%	190.7	Preliminary January 2005
PPI Industrial Commodities -Less Fuel & Pwr* (BLS Series Id wpu03t15m05)	20%	156.5	Preliminary January 2005
#2 Diesel Fuel* (BLS Series ID wpu057303)	3%	141.1	Preliminary January 2005
Steel (BLS Series Id WPU1026)	12%	160.0	Preliminary January 2005
Prime Rate***	15%	5.25	Actual December 31, 2004
GDP-IPD**	15%	109.100	Final Q4 2004

*U.S. Department of Labor, Bureau of Labor Statistics, Not Seasonally Adjusted

**U.S. Department of Commerce, Bureau of Economic Analysis, Price Indexes for Gross Domestic Product, / Table 6 / Seasonally Adjusted

***Prime rate of interest as reported in the money rates section of the Wall Street Journal on the fifteenth (15th) day of the last month in the quarter prior to the applicable price adjustment effective date or first business day thereafter - - as published on the subsequent business day.

Embedded Escalation Deadband

The impact of the quarterly escalations, on a net basis, shall not impact the Base Price until they exceed the Embedded Escalation Deadband designated in Table A on a quarterly basis. Any adjustment exceeding the 2% deadband shall be shared equally by Parties. Exhibit A illustrates a hypothetical example of an escalation calculation.

Minimum Adjustments

However, in no event shall the Adjusted Base price at any time be lower than the Base Price, by calendar year, as listed in paragraph 9 above.

Change or Discontinuance of Indices

If the basis for any of the index numbers is changed, said index shall be adjusted to take into account such changed basis. In the event any designated index is discontinued or altered, becomes unavailable, or is no longer applicable, the Parties shall undertake to agree on a substitute index

or a substitute method of cost adjustment which most closely matches the economic structure of the discontinued or altered index. If the Parties fail to reach agreement on the substitute index or method within 90 days, then the substitute index or substitute method of cost adjustment shall be submitted to arbitration and resolved.

Rounding

The values to perform the calculations shall be rounded to two decimal places.

13). **Weight Determination:** The weight of each barge Shipment shall be determined by a composite of all trucks that were dumped directly into that particular barge using Seller's certified truck scales, or if not available, by draft survey taken at the Source at Seller's expense, or if neither of these are available by Buyer's unloaded weights at its destination. Seller assures Buyer that all coal transferred from truck to the barge shall not at any time touch the ground once the truck has been weighed. Buyer, upon request, reserves the right to view any and all truck weight tickets. Seller represents that its truck scales shall be calibrated on at least a semiannual basis. Such weights shall be final and binding and shall govern for payment.

General Terms and Conditions

14). **Force Majeure:** If a Party is delayed in or prevented from performing, in whole or in part, any of its obligations due to acts of God, war, riots, civil insurrection, threats of violence, acts of the public enemy, terrorism, nuclear disasters, strikes, lockouts, labor shortages and disputes, disturbances or unrest, damage to mines or plants, inability to procure supplies or equipment, breakdown of equipment or facilities, fires, explosions, floods, river freeze-up, earthquakes, inability to obtain permits or authorizations from any governmental authority after prudent and timely submission and application for same, or unforeseen geologic conditions in coal seams not discernable by prudent engineering or other causes that are beyond the reasonable control and without the fault or negligence of the Party affected or Party's coal supplier or resale customer thereby (such events being referred to herein as "Force Majeure"), and such Party gives oral notice within 10 days and full details of the Force Majeure to the other Party within ninety (90) days after the occurrence of the event of Force Majeure (such notice to be confirmed in writing), then during the pendency of such Force Majeure but for no longer period, the obligations of the Parties (other than obligations to make payments then due) shall be suspended to the extent required by the event. The Party affected by the Force Majeure shall remedy the Force Majeure with all reasonable dispatch and will keep the other Party advised as to the continuance of the Force Majeure event; provided however, that this provision shall not require Seller to deliver, or Buyer to receive, the Commodity at points other than the Delivery Point for the authorized Source including allowable substitutions under the Transaction. A change in market conditions including the ability of Seller to sell Commodity at a higher price, or Buyer or Buyer's customer to buy Commodity at a lower price, whether or not foreseeable shall not be considered a Force Majeure event. If an event of complete or partial Force Majeure persists for a continuous period of sixty (60) days, then the Party not claiming Force Majeure shall have the option, upon three (3) days' prior written notice, to terminate this transaction to the extent affected and the associated obligations of the Parties (other than payment obligations for prior performance thereunder). In the event of a Force Majeure, delivery of the affected Quantity of Commodity shall not be made up except by mutual agreement of the Buyer and Seller. If Seller claims Force Majeure and is unable to meet all of its sales obligations under this Agreement and any other of its Commodity sales agreements involving Commodity of a similar type and quality as the Commodity from the affected Source, or if Buyer claims Force Majeure and is unable to meet all of its purchase obligations under this Agreement and any other of its Commodity purchase agreements involving Commodity of a similar type and quality as the Commodity, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated on a

pro rata basis among the affected transaction(s) and such other Commodity supply or purchase agreements involving Commodity of the same type and quality as the Commodity, to the extent contractually permitted by such transaction(s) and agreement(s). An event of Force Majeure affecting the Arclar Mining Complex shall be deemed an event of Force Majeure affecting Seller. An event of Force Majeure affecting the East Bend Station shall be deemed an event of Force Majeure affecting Buyer.

15). Environmental Law Force Majeure: If any new environmental law is enacted or new regulation is promulgated which becomes effective during the term of this Agreement, that would not have been reasonably known as of the effective date of this agreement, Buyer and Seller shall first make all reasonable efforts to change its operations or equipment in order to continue utilizing the maximum amount of coal meeting the existing coal quality specifications under the Agreement. If after all such reasonable efforts have been made Buyer cannot continue to utilize all of the coal to be delivered hereunder, Buyer may reduce coal shipments hereunder on a pro-rata basis with any/all of Buyer's contracts utilizing similar coal, notwithstanding Section 12(b).

If as a result, Seller's contract tonnage is reduced hereunder, then Buyer shall promptly notify Seller, in writing, of the new required coal quality specifications for any replacement tonnage. Seller shall consider and evaluate what steps can be reasonably taken to meet the new coal quality specifications. Buyer and Seller agree to negotiate in good faith towards a new agreement or an amendment of this Agreement based on such environmental changes in law.

Changes in market conditions, commercial frustration, commercial impracticability or the occurrence of unforeseen events rendering performance of this Agreement uneconomical for Buyer, shall not constitute a new environmental law or regulation

16). Damages: (a) Unless excused by Force Majeure, or Buyer's failure to perform, and in the event that Seller delivers 80% or more of the Quantity of Commodity to be delivered in any calendar month during the Term of this Agreement pursuant to the Delivery Schedule, for barge deliveries, or two (2) days of shipments for truck deliveries, or one (1) train shipment, whichever is applicable, then Seller shall have thirty (30) days to make-up the shortfall of tons of Coal Seller failed to deliver in given month ("Make-Up Tons") without penalty to Seller. Any shipments in any month shall be deemed to be Make-Up Tons until all deficiencies from any previous months, if applicable, are satisfied. Unless excused by Force Majeure, or Buyer's failure to perform, if Seller delivers less than (i) 80% of the Quantity of Commodity to be delivered hereunder pursuant to the Delivery Schedule plus (ii) the cumulative Make-Up Tons then, Buyer and Seller shall enter into "good faith" negotiations to determine a mutually agreeable make-up schedule. If after 15 days, a mutually agreeable make-up schedule has failed to be agreed upon, then Seller shall pay to the Buyer for each ton of the deficiency an amount equal to the positive difference, if any, incurred by Buyer as a result of taking delivery of substitute coal at a location other than the Delivery Point between the replacement price paid less the then current Contract Price or, absent such a purchase, the market price for such Quantity of Commodity FOB the Delivery Point, as determined by Buyer in a commercially reasonable manner less the then current Contract Price. It is expressly agreed that Buyer shall not be required to enter into a replacement transaction in order to determine the Replacement Price. For the purposes of this paragraph, any Quantity of Commodity delivered in any calendar month that has been rejected by Buyer in accordance with section 10 hereof shall not be considered to have been shipped.

(b) Unless excused by Force Majeure or the Seller's failure to perform, if Buyer fails to accept 80% or more of the Quantity of Commodity to be received in any calendar month during the Term of this Agreement pursuant to the Delivery Schedule for barge deliveries, or two (2)

days of shipments for truck deliveries, or one (1) train shipment, whichever is applicable, then Buyer shall have thirty (30) days to make-up the shortfall of tons of commodity Buyer failed to accept delivery in a given month ("Make-Up Tons") without penalty to Buyer. Any shipments in any month shall be deemed to be Make-Up Tons until all deficiencies from any previous months, if applicable, are satisfied. If Buyer accepts less than (i) 80% of the Quantity of Commodity to be received hereunder pursuant to the Delivery Schedule plus (ii) the cumulative Make-Up Tons then, Seller and Buyer shall enter into "good faith" negotiations to determine a mutually agreeable make-up schedule. If after 15 days, a mutually agreeable make-up schedule has failed to be agreed upon then, Buyer shall pay to the Seller for each ton of the deficiency an amount equal to the positive difference, if any, obtained by subtracting the Market Sales Price from the then current Contract Price for the Deficiency. "Market Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells (if at all) the Deficiency (plus additional transportation charges, if any, incurred by Seller as a result of delivering Commodity to a location other than the Delivery Point) or, absent such resale, the market price for such Quantity of Commodity FOB the Delivery Point, as determined by Seller in a commercially reasonable manner. It is expressly agreed that Seller shall not be required to enter into a replacement transaction in order to determine the Sales Price. For the purposes of this paragraph, any quantity of Commodity delivered in any calendar month that has been rejected by Buyer in accordance with section 10 hereof shall not be considered to have been shipped.

17). Payment: Buyer shall self-invoice semi-monthly. Shipments made during the first through the fifteenth of each month are payable ten (10) days after the end of the month at the Contract Price. Shipments made during the sixteenth through the end of each month are payable, with quality adjustments for all Shipments loaded during the month, 25 days after the end of each month. Buyer shall pay, by electronic transfer in immediately available United States funds, the amount set forth on each invoice along with the necessary information enabling reconciliation to the relevant Shipment to the applicable payment address below:

Buyer's Billing Address:

139 E. Fourth Street, EA 502
Cincinnati, OH 45201-0960
Attn: Supervisor, Billing
Fax: (513) 419-5790

Seller's Payment Address:

Bank Name: PNC Bank, N.A.
Account Number: 1008971287
ABA number: 043000096

Counterparty Billing & Payment Address:

COALSALES, LLC
701 Market St, 9th St
St. Louis, MO 63101-1826

In the event of repeated late payments, Seller may provide Notice to Buyer that any future late and/or overdue payments shall accrue interest (at the prime rate of interest for United States Dollar as published from time to time during such period under the section titled, "Money Rates" by the Wall Street Journal, plus two percent, but not to exceed the maximum applicable lawful interest rate (hereinafter "Interest Rate") from the due date until paid.

In the event Buyer's senior unsecured or corporate credit rating falls below investment grade (BBB- as defined by Standard & Poor's or the equivalent as defined by other public ratings agencies), Buyer shall be required to provide payment in cash three Business days in advance of loading.

18). **Bankruptcy:** In the event either party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), or (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, (collectively, "Bankruptcy Proceedings"), then the other party may, at its option and in its sole discretion anytime thereafter upon written notice, terminate this agreement in whole or in part only in the event the bankruptcy is not removed or dismissed within thirty (30) days.

19). **An Event of Default ("Event of Default")** with respect to a Party (the "Defaulting Party") shall mean: (i) the failure of the Defaulting Party to pay when due any required payment and such failure is not remedied within fourteen (14) Business Days after written notice; (ii) the failure of the Defaulting Party to comply with its other material obligations under this Agreement and such failure is not remedied within fourteen (14) Business Days after written notice; (iii) a Party or its credit support provider is subject to a Bankruptcy Proceeding; or (iv) a Party suffers a Material Adverse Change and fails to provide Adequate Assurances.

20). **Material Adverse Change:** A Material Adverse Change occurs with respect to the Buyer if (i) there is any material change in the condition (financial or otherwise), net worth, assets, properties or operations, or in economic conditions, which, taken as a whole, can reasonably be anticipated to impair the ability of the Buyer to fulfill its obligations; or (ii) there is reasonable grounds to believe that the creditworthiness of the Buyer has become unsatisfactory or its ability to perform under this Agreement has been materially impaired. Seller shall have the right to deliver a written demand to Buyer (Posting Party) requiring Adequate Assurance of Buyer's ability to perform all of its obligations under this Agreement. Buyer shall deliver such Adequate Assurance (as defined below), in a form reasonably acceptable to Seller.

The amount of Adequate Assurance shall be equivalent to sixty (60) Days of accounts receivable (as defined by the Contract Price multiplied by the Contract Quantity for a two-month period) plus 180 days replacement sale of coal (as defined by the difference between the current market price and the Agreement price for a six month period determined on a net or setoff basis. This portion of the Adequate Assurance shall only have to be posted when the Agreement price is higher than the market price). The Adequate Assurance shall remain intact until Buyer's creditworthiness is restored to a level of creditworthiness equal to or better than that in effect on the date of this Agreement or the Agreement is terminated and the Buyer's obligations under the Agreement have been discharged.

Until Buyer delivers such Adequate Assurance to Seller, Seller shall have the right, without limiting any other rights that may be available to Seller, to defer or eliminate shipments due to Buyer or require payment three business days in advance of loading.

A Material Adverse Change occurs with respect to the Seller if (i) there is any material change in the condition (financial or otherwise), net worth, assets, properties or operations, or in economic conditions, which, taken as a whole, can reasonably be anticipated to impair the ability of the Seller to fulfill its obligations; or (ii) there is reasonable grounds to believe that the

creditworthiness of the Seller has become unsatisfactory or its ability to perform under this Agreement has been materially impaired, and for (i) or (ii) to become effective, the Seller also has material, unexcused reductions in shipments from the agreed upon shipment schedule.

The amount of Adequate Assurance shall be equivalent to 180 days replacement cost of coal (as defined by the difference between the current market price and the Agreement price for a six month period determined on a net or setoff basis), and shall be provided only when the market price is higher than the Agreement price. The Adequate Assurance shall remain intact until Seller's creditworthiness is restored to a level of creditworthiness equal to or better than that in effect on the date this section was made part of the Agreement, the shipment schedule is cured or the Agreement is terminated and the Seller's obligations under the Agreement have been discharged.

Until Seller delivers such Adequate Assurance to Buyer, Buyer shall have the right, without limiting any other rights that may be available to Buyer, to defer or eliminate shipments due from Seller.

"Adequate Assurances" for the Posting Party shall mean collateral in the form of cash, Letter(s) of Credit, or other security reasonably acceptable to the Requesting Party. Letter(s) of Credit means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form reasonably acceptable to the Requesting Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the Posting Party.

21). Netting: If the Parties are required to pay any amount on the same day or in the same month under this Agreement, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount may pay to the other Party the difference between the amounts owed.

22). Limitation of Liability: No waiver of remedies or damages herein shall apply to claims of anticipatory repudiation or remedies thereof provided for by law except that neither Seller nor Buyer shall be liable to the other for consequential, incidental, punitive, exemplary, special or indirect damages, lost profits, or business interruption damages, whether in equity or by statute, in tort, or in contract, under any indemnity provision or otherwise.

23). Title/ Risk of Loss: Seller warrants good title to all Commodity delivered hereunder, free and clear of all claims and encumbrance. Title and risk of loss shall pass to the Buyer upon delivery at the Delivery Point.

24). Assignment: Neither party shall assign this Agreement without the prior written consent of the other, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, either party may, without the need to consent from the other party (and without relieving itself from liability hereunder), (a) transfer, sell, pledge, encumber, or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (b) transfer or assign this Agreement to an Affiliate to such party if such affiliate has a credit rating equal to or greater than the assigning party; or (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such party by way of merger, reorganization or otherwise; *provided however*, that in each such case any such assignee shall agree in writing to be bound by terms and conditions hereof and that no such assignment shall in any way relieve the assignor from liability or full performance under

this Agreement. "Affiliate" means, with respect to any person, any other person (other than an individual) that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of 50% or more of the outstanding capital stock or other equity interests having ordinary voting power.

25). **Entire Agreement:** This Agreement is the final and entire agreement between the parties. No modification or amendment of this agreement shall be effective or binding unless set forth in writing signed by both parties.

26). **No Waiver:** Waiver of any breach of the Agreement shall not be construed as a waiver of any other breach.

27). **Governing Law:** This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana, including without limitation the Uniform Commercial Code, without giving effect to the doctrine of conflict of laws.

28). **Confidentiality:** Each party hereby acknowledges that this Agreement contains confidential information that may place such a party at a competitive disadvantage if disclosed to the public. Therefore, the terms of this Agreement shall be preserved as confidential by the parties, except to the extent disclosure may be required by law, regulation or judicial administrative order, and the parties shall employ reasonable means to effectuate such confidentiality. However, disclosure of information is permitted to a Party's affiliates, directors, employees, regulators, counsel, auditors, agents, or partners in ownership of a generation facility, provided that it is necessary to show the information to such individuals or entities due to their relationship with the Party and such individuals and entities are informed of the confidential nature of the information.

29). **Notices:** Notices under this Agreement shall be given in writing and shall be effective when received.

Notices to Buyer should be sent to:

Manager of Fuel Supply, Regulated Stations
PSI Energy, Inc.
1000 E. Main St
Plainfield, IN 46168

Notices to Seller should be sent to:

Vice President of Sales- Midwest
Phone: 314-342-3400
Fax: 314-342-7529
701 Market St.
St. Louis, MO 63101

30). **Limitation on warranty:** EXCEPT AS EXPRESSLY SET FORTH HEREIN. SELLER EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED. INCLUDING WITHOUT LIMITATION,

ANY WARRANTY WITH RESPECT TO, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

31). Dispute Resolution

- (a). Procedure. If a dispute arises between the Parties relating to this Agreement, the Parties agree to use the following procedure prior to either Party pursuing other available remedies:
- (i) A meeting shall be held promptly between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.
 - (ii) If within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, either Party may with written notice require the other Party to arbitrate such dispute.
 - (iii) Upon written notice to the other Party, either Party may request that the matter be referred to binding arbitration before three arbitrators, one of whom shall be named by Buyer, one by Seller, and a third of whom shall be named by the two arbitrators appointed by Buyer and Seller, respectively. If either Seller or Buyer fails to select an arbitrator within fifteen (15) days after receipt of written notice from the other of its election to submit a matter to arbitration and naming its arbitrator, the Party giving such notice shall have the right to appoint an arbitrator for the Party in default; and the two thus chosen shall then select the third arbitrator. The appointment of the third arbitrator, if not agreed upon within twenty (20) days, shall be made in accordance with CPR's Rules for Non-administered Arbitration then in effect (the "Rules"). The Rules shall govern any such proceedings. Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Each Party shall pay for the services and expenses of the arbitrator appointed by it and for its costs, expenses, and attorneys' fees. Fees and expenses of the third arbitrator and court reporter shall be paid in equal parts by the Parties hereto.
- (b). Proceedings. All negotiation and arbitration proceedings shall be strictly confidential and used solely for the purposes of settlement. Any materials prepared by one Party for those proceedings shall not be used as evidence by the other Party in any subsequent arbitration or legal proceeding. All arbitration proceedings shall also be strictly confidential.
- (c). Clarity of Obligations. Each Party fully understands its specific obligations under the provisions of this Section. Neither Party considers such obligations to be in any way unenforceable, and neither Party will contend to the contrary at any future time or in any future proceeding.

32). On the Effective Date hereof, each Party represents and warrants to the other that:

- (a) The execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate or other organizational action on its part and do not violate or conflict with any law applicable to it, its organizational documents or any order or judgment of a court or other agency of government applicable to it or its assets;

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(b) Its obligations under this Agreement are legally valid and binding obligations, enforceable in accordance with their terms;

(c) It, or its affiliates, have, or will diligently pursue, any and all necessary governmental and other third party permits, approvals and licenses required in connection with the execution, delivery and performance of this Agreement;

(d) There are no Bankruptcy Proceedings, as defined herein, pending or being contemplated by it or, to its knowledge, threatened against it;

(e) There are no known suits, proceedings, judgments rulings or orders by or before any court or any governmental authority that materially adversely affect its ability to perform its obligations under this Agreement;

(f) With respect to this Agreement, it, or its affiliates, are a producer, processor, commercial user or merchant handling Coal, and it is entering into such Agreement for purposes related to its business as such.

THE PARTIES, BY THEIR AUTHORIZED AGENTS, HEREBY EXECUTE THIS COAL SUPPLY AGREEMENT WHICH SHALL BE EFFECTIVE ON THE DATE FIRST ABOVE WRITTEN.

THE UNION LIGHT, HEAT AND POWER
COMPANY

BY: *V.E. Steward*

TITLE: *Vice President*

DATE: *12/29/05*

COALSALES, LLC

BY: *M. Michael Sutter*

TITLE: *SR-VP SALES & Marketing*

DATE: *12/30/05*

**Schedule 1
 Standard to Confirmation: Specifications**

ILB 12,100 Btu Product

The Coal delivered hereunder shall conform to the following specifications on an "as received" basis:

<u>Specification</u>	<u>Guaranteed Quality Monthly Weighted Average</u>	<u>Shipment Rejection Limits (Per Barge)</u>
BTU/LB.	12,100	< 11,500 (Arclar, Dodge Hill & Dyson Creek) < 11,000 (Highland) < 10,800 (Somerville)
MOISTURE	10.0%	
ASH	10.0%	> 13.0%
Lb.s SO ₂ /mmbtu	5.00	> 6.60
VOLATILE	35%	
Size (2" x 0"):		
-- Top size (inches)*	<2"	
-- Fines (% by wgt)		
Passing ¼" screen	< 55%	
GRINDABILITY (HGI)	54	< 52

ASH FUSION TEMPERATURE (°F) (ASTM D1857)

REDUCING ATMOSPHERE

Initial Deformation	
Softening (H=W)	2050° min
Softening (H=½W)	
Fluid	

* All the Coal will be such size that it will pass through a screen having square perforations three (3) inches in diameter, but shall not contain more than 55 percent (55.0%) by weight of Coal that will pass through a screen having square perforations one-quarter (¼) of an inch in diameter.

Note: As used herein > means greater than and < means less than.

Table A
The Union Light Heat and Power Company
Embedded Escalation Deadband
2006-2008

<u>Escalation Date</u>	<u>EMBEDDED ESCALATION DEADBAND</u>	
	<u>Quarterly Increase</u>	<u>Cumulative Increase</u>
Jan 1 - 2006	\$0.1875	\$ 0.188
Apr 1 - 2006	\$0.1875	\$ 0.375
Jul 1 - 2006	\$0.1875	\$ 0.563
Oct 1 - 2006	\$0.1875	\$ 0.750
Jan 1 - 2007	\$0.1922	\$ 0.942
Apr 1 - 2007	\$0.1922	\$ 1.134
Jul 1 - 2007	\$0.1922	\$ 1.327
Oct 1 - 2007	\$0.1922	\$ 1.519
Jan 1 - 2008	\$0.1970	\$ 1.716
Apr 1 - 2008	\$0.1970	\$ 1.913
Jul 1 - 2008	\$0.1970	\$ 2.110
Oct 1 - 2008	\$0.1970	\$ 2.307

* Based on 2% deadband for a \$37.50, \$38.44 and \$39.40 price for 2006, 2007 and 2008, respectively

Exhibit A
The Union Light Heat and Power Company
Hypothetical Escalation Adjustment
Apr-06

Base Price	\$37.50
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<u>Index Utilized</u>	<u>Index Weight</u>	<u>Year One Base Amount</u>	<u>Base ⁽¹⁾ Index</u>	<u>Revised ⁽²⁾ Index</u>	<u>Adjustment Amount</u>	<u>Adjusted Base Price</u>
CPI (W)	35%	\$ 13.125	190.7	196.4	0.392	
PPI Industrial Commodities - Less Fuel & Pwr	20%	\$ 7.500	156.5	169.7	0.633	
#2 Diesel Fuel	3%	\$ 1.125	141.1	142.8	0.014	
Steel	12%	\$ 4.500	160.0	141.3	(0.526)	
Prime Rate	15%	\$ 6.625	5.25	6.50	0.268	
GDP - IPD	15%	\$ 6.625	109.100	110.954	0.096	
Embedded Escalation Deadband ⁽³⁾					(0.375)	
					\$ 0.602 ⁽⁴⁾	
50% of Adjusted Amount					\$ 0.251 ⁽⁵⁾	
Total		\$ 37.500			\$ 0.251	\$ 37.751

- ⁽¹⁾ Base Indices as established per Coal Supply Agreement.
⁽²⁾ Hypothetical Index for the date established in Coal Supply Agreement.
⁽³⁾ Per Section 12 of Coal Supply Agreement and Table A, Cumulative Increase.
⁽⁴⁾ The sum of the above adjustments or zero, which ever is greater.
⁽⁵⁾ 50% of Adjusted Amount - Adjustment shall be shared equally by both parties.

FOR ILLUSTRATION PURPOSES ONLY

Exhibit A

**The Union Light Heat and Power Company
 Hypothetical Escalation Adjustment
 Jan-07**

Base Price	\$38.44
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<u>Index Utilized</u>	<u>Index Weight</u>	<u>Year One Base Amount</u>	<u>Base ⁽¹⁾ Index</u>	<u>Revised ⁽²⁾ Index</u>	<u>Adjustment Amount</u>	<u>Adjusted Base Price</u>
CPI (W)	35%	\$ 13.464	190.7	195.0	0.303	
PPI Industrial Commodities - Less Fuel & Pwr	20%	\$ 7.888	166.5	169.7	0.648	
#2 Diesel Fuel	3%	\$ 1.153	141.1	142.8	0.014	
Steel	12%	\$ 4.613	160.0	141.3	(0.539)	
Prime Rate	15%	\$ 5.766	5.25	5.50	0.275	
GDP - IPD	15%	\$ 5.766	109.100	110.954	0.098	
Embedded Escalation Deadband ⁽³⁾					(0.942)	
					\$ - ⁽⁴⁾	
50% of Adjusted Amount					\$ - ⁽⁵⁾	
Total		\$ 38.440			\$ -	\$ 38.440

- ⁽¹⁾ Base indices as established per Coal Supply Agreement.
- ⁽²⁾ Hypothetical index for the date established in Coal Supply Agreement.
- ⁽³⁾ Per Section 12 of Coal Supply Agreement and Table A, Cumulative Increase.
- ⁽⁴⁾ The sum of the above adjustments or zero, which ever is greater.
- ⁽⁵⁾ 50% of Adjusted Amount - Adjustment shall be shared equally by both parties.

FOR ILLUSTRATION PURPOSES ONLY

Exhibit A

**The Union Light Heat and Power Company
 Hypothetical Escalation Adjustment
 Jan-08**

Base Price	\$39.40
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<u>Index Utilized</u>	<u>Index Weight</u>	<u>Year One Base Amount</u>	<u>Base ⁽¹⁾ Index</u>	<u>Revised ⁽²⁾ Index</u>	<u>Adjustment Amount</u>	<u>Adjusted Base Price</u>
CPI (W)	35%	\$ 13.790	190.7	201.0	0.745	
PPI Industrial Commodities - Less Fuel & Pwr	20%	\$ 7.880	156.5	169.7	0.665	
#2 Diesel Fuel	3%	\$ 1.182	141.1	158.0	0.142	
Steel	12%	\$ 4.728	160.0	153.0	(0.207)	
Prime Rate	15%	\$ 5.910	5.25	5.50	0.281	
GDP - IPD	15%	\$ 6.910	109.100	110.954	0.100	
Embedded Escalation Deadband ⁽³⁾					(1.716)	
					\$ 0.010 ⁽⁴⁾	
50% of Adjusted Amount					\$ 0.005 ⁽⁵⁾	
Total		\$ 39.400			\$ 0.005	\$ 39.405

- ⁽¹⁾ Base Indices as established per Coal Supply Agreement.
- ⁽²⁾ Hypothetical Index for the date established in Coal Supply Agreement.
- ⁽³⁾ Per Section 12 of Coal Supply Agreement and Table A, Cumulative Increase.
- ⁽⁴⁾ The sum of the above adjustments or zero, whichever is greater.
- ⁽⁵⁾ 50% of Adjusted Amount - Adjustment shall be shared equally by both parties.

FOR ILLUSTRATION PURPOSES ONLY

Coal Seller:

CBS&C Inc.

7000 Houston Road, Bldg 200, Suite 17

Florence, KY 41017

Attn: Mr. William C. Bray

Tel. 859 746 2666

Fax. 859 746 1904

Ref #: _____

Coal Buyer:

Duke Energy Kentucky, LLC

P.O. Box 960, EA606

Cincinnati, OH 45201-0960

Attn: Kim Lubrecht

Tel. 704-382-6344

Fax. 704-382-4568

Ref #: HS 10465

Coal Supply Agreement

This Agreement, by and between CBS&C Inc., a Kentucky corporation (hereinafter "Seller"), and Duke Energy Kentucky, LLC, a Kentucky corporation (hereinafter "Buyer"), establishes the terms and conditions for the sale and purchase of Coal (The "Agreement"). Seller and Buyer can be individually referred to as a "Party" or collectively as "Parties."

- 1). **Commodity:** Crushed, bituminous Coal containing no synthetic fuels, substantially free from any extraneous material and debris, with no intermediate sizes to be added or removed and otherwise meeting the Specifications of this Agreement (hereinafter "Coal" or "Commodity").
- 2). **Trade Date:** December 14, 2006
- 3). **Contract Price:** \$29.00 per ton at Delivery Point. The price shall include all taxes, fees, and any proper charges.
- 4). **Term:** January 1, 2007 through December 31, 2007
- 5). **Quantity:** up to 2 barges/month – "as needed, as available"
- 6). **Delivery Point:** F.O.B. barge M.P. 514.0 Ohio River
All shifting and fleeting charges at point of origin are for Seller's account.
- 7). **Specifications:** Per Attached Schedule 1

Buyer may reject any Shipment falling outside of the Specifications, Shipments that may cause handling problems, or Shipments that are contaminated with foreign materials with written notification to Seller. Buyer shall return Coal to Seller at Seller's cost including all transportation costs to and from the destination. Seller shall make best efforts to replace the rejected Coal no later than the last calendar day of the delivery month. A "Shipment" shall be a barge lot load.

8).	Source(s):	Mine:	Patriot _____ S ___ U ___
		Mine Operating Co.:	Hilltop Basic Resources
		Mine State:	_____
		Mine County:	_____
		BOM District:	_____

9). Scheduling: Seller will advise Buyer when a barge is available for delivery. Buyer will inform Seller whether it will purchase and accept delivery of the barge within 24 hours. If Buyer accepts a barge from Seller, Buyer will make arrangements to transport the barge to Buyer's plants during Buyer's normal course of business.

10). Sampling and Analysis: Buyer shall sample, via a mechanical sampler, and analyze each Shipment of Coal at its expense. Sampling shall be carried out following the American Society of Testing and Materials (ASTM) standard, as set forth in ASTM standard D2234 (Type I, condition A or B, systematic spacing). Analysis is to be done in accordance with applicable ASTM standards by a mutually agreeable independent laboratory. Such analysis shall be final and binding and shall govern for payment.

Buyer's Source

Buyer shall make available sample splits within (3) three business days of loading. Seller, at its expense, may make arrangements to pick up samples. Buyer shall retain, for a period of 60 days from the loading date, sample splits taken in accordance with the provisions of this Agreement for use by Buyer and the independent laboratory specified below.

In the event of a disagreement over Coal analysis and upon Buyer and Seller selecting a mutually agreed upon independent laboratory, Buyer shall provide sample splits to the independent laboratory for analysis. Such analysis shall be accepted as the quality of Coal received. The cost of the independent analysis shall be equally shared between Buyer and Seller; however, the cost of the independent analysis shall be paid by Seller if the results of such analysis and Buyer's analysis are within applicable ASTM standards for repeatability and reproducibility, or in the absence of ASTM standards, mutually agreeable coal industry standards. If Buyer's results are not so confirmed, then the laboratory's results shall be accepted as the quality and characteristics of the Coal.

Seller, after notification, shall be entitled to visit and inspect the sampling and analysis facilities for all coal delivered pursuant to this Agreement and to observe all operations of those facilities. Buyer, after notification, shall be entitled to visit the loading facilities of Seller to observe the operations of those facilities.

Buyer must immediately notify Seller if Buyer's sample system is unavailable. In such case, Buyer shall sample and analyze Coal at destination using barge top analysis. Buyer's analysis shall be accepted as the quality of the Coal for payment.

11). Quality Adjustments:

BTU Price Adjustment:

$$$/ton = (Monthly Weighted Average Actual Btu/lb - Monthly Weighted Average Guaranteed Btu/lb) \times Contract Price / Monthly Weighted Average Guaranteed Btu/lb.$$

Ash Penalty Adjustment (\$/ton): If the Monthly Weighted Average Actual Ash % exceeds the Monthly Guaranteed Ash %, the Ash Penalty Adjustment is equal to:

$$$/ton = (Monthly Weighted Average Actual Ash \% - Monthly Weighted Average Guaranteed Ash \%) \times \$0.30$$

Sulfur (Check One):

 N/A
 X Sulfur penalty adjustment (\$/ton):

SO2 adjustment for scrubber coal (\$/ton):

If the Monthly Weighted Average Actual lbs SO₂/mmbtu exceeds the Monthly Weighted Average Guaranteed lbs SO₂/mmbtu for Coal loaded by Seller in any calendar month, the SO₂ Adjustment for all Coal loaded during the month is equal to:

$$$/ton = (Monthly Weighted Average Guaranteed lbs SO_2/mmbtu - Monthly Weighted Average Actual lbs. SO_2/mmbtu) \times Monthly Weighted Average Actual Btu/lb \times ((Spot price of SO_2 Emission Allowances \times .10) + \$85) / 1,000,000$$

Spot price of SO₂ Emission Allowances for any given delivery month means the 3 day average SO₂ Price of allowances expressed in dollars per ton of SO₂ in the table entitled "Daily Market Assessments, SO₂ Allowances, Price for current vintage year" published in Energy Argus Air Daily, or its successor publication, as published on the 3rd, 4th and 5th business days of the subsequent month (e.g., spot price for SO₂ allowances for January 2005 coal shipments would be calculated by using an average of the indices published in Energy Argus Air Daily on February 3, 4, and 7.)

Price adjustments shall be made to the nearest \$0.001 and calculated on a monthly weighted average.

12). Weight Determination: The weight of each barge Shipment shall be determined by belt scales at barge unloading as performed by the Buyer with the costs for Buyer's account. Buyer shall maintain a record verifying calibration of it's belt scales. Such weights shall be final and binding and shall govern for payment.

13). Loading Terms: Seller agrees to load a minimum of 1,500 tons into each open hopper rake jumbo barge and a minimum of 1,700 tons into each open hopper box jumbo barge. If Seller fails to load the barges to meet these minimums, the difference between the minimum tonnage and the actual tonnage times the barge rate (\$/ton) to ULH&P's destination will be withheld from payments. Seller agrees to ensure that coal is available and that the loading dock has the capacity to load barges within 72 hours of placement. Failure to load barges within 72 hours may result in demurrage charges to the Seller. ULH&P may withhold demurrage charges from final payment.

102?
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165?

Buyer's account

General Terms and Conditions

14). Force Majeure: If a Party is delayed in or prevented from performing, in whole or in part for at least 3 days in duration, any of its obligations due to acts of God, war, riots, civil insurrection, acts of the public enemy, strikes, lockouts, natural disasters, or other causes that are beyond the reasonable control and without the fault or negligence of the Party affected thereby (such events being referred to herein as "Force Majeure"), and such Party gives oral notice and full details of the Force Majeure to the other Party as soon as reasonably practicable after the occurrence of the event of Force Majeure (such notice to be confirmed in writing), then during the pendency of such Force Majeure but for no longer period, the obligations of the Parties (other than obligations to make payments then due) shall be suspended to the extent required by the event. The Party affected by the Force Majeure shall remedy the Force Majeure with all reasonable dispatch and will keep the other Party advised as to the continuance of the Force Majeure event; provided however, that this provision shall not require Seller to deliver, or Buyer to receive, the Coal at points other than the Delivery Point for the authorized Source including allowable substitutions under the Transaction. A change in market conditions including the ability of Seller to sell Coal at a higher price, or Buyer or Buyer's customer to buy Coal at a lower price, whether or not foreseeable shall not be considered a Force Majeure event. If an event of complete or partial Force Majeure persists for a continuous period of sixty (60) days, then the Party not claiming Force Majeure shall have the option, upon three (3) days' prior written notice, to terminate this transaction to the extent affected and the associated obligations of the Parties (other than payment obligations for prior performance thereunder). In the event of a Force Majeure, delivery of the affected Quantity of Coal shall not be made up except by mutual agreement of the Buyer and Seller. If Seller claims Force Majeure and is unable to meet all of its sales obligations under this Agreement and any other of its Coal sales agreements involving Coal of a similar type and quality as the Coal, or if Buyer claims Force Majeure and is unable to meet all of its purchase obligations under this Agreement and any other of its Coal purchase agreements involving Coal of a similar type and quality as the Coal, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated on a pro rata basis among the affected transaction(s) and such other Coal supply or purchase agreements involving Coal of the same type and quality as the Coal, to the extent contractually permitted by such Transaction and agreements.

15). Damages:

(a) Unless excused by Force Majeure or the Buyer's failure to perform, if Seller fails to deliver all or part of the Quantity of the Coal to be delivered hereunder pursuant to the Delivery Schedule, Seller shall pay to the Buyer for each ton of deficiency (the "Deficiency") an amount equal to the positive difference, if any, obtained by subtracting the Contract Price for the Deficiency from the Replacement Price. "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases substitute Coal for the Deficiency (plus additional transportation charges, if any, incurred by Buyer as a result of taking delivery of substitute Coal at a location other than the Delivery Point) or, absent such a purchase, the market price for such Quantity of Coal FOB the Delivery Point, as determined by Buyer in a commercially reasonable manner. It is expressly agreed that Buyer shall not be required to enter into a replacement transaction in order to determine the Replacement Price.

(b) Unless excused by Force Majeure or the Seller's failure to perform, if Buyer fails to accept all or part of the Quantity of the Coal to be delivered hereunder pursuant to the Delivery Schedule, Buyer shall pay to the Seller for each ton of deficiency (the "Deficiency") an amount

equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price for the Deficiency. "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells (if at all) the Deficiency (plus additional transportation charges, if any, incurred by Seller as a result of delivering Coal to a location other than the Delivery Point) or, absent such resale, the market price for such Quantity of Coal FOB the Delivery Point, as determined by Seller in a commercially reasonable manner. It is expressly agreed that Seller shall not be required to enter into a replacement transaction in order to determine the Sales Price.

16). Payment: Buyer will self-invoice monthly. Shipments unloaded during the previous month with quality adjustments for all Shipments unloaded during the month, shall be paid 25 days after the end of each month. Shipments shall be unloaded in the normal course of business, without unreasonable delay by Buyer. Buyer shall pay, by electronic transfer in immediately available United States funds, the amount set forth on each invoice along with the necessary information enabling reconciliation to the relevant Shipment to the applicable payment address below:

Monthly on 25th of

ULH&P Billing Contact:

1000 E. Main Street
Plainfield, IN 46168
Attn: Anita Webb
Fax: (317) 838-1023

CBS&C Inc.:

7000 Houston Road
Building 200, Suite 17
Florence, KY 41017
Attn: William Bray
Fax: 859 746 1904

Counterparty Payment Address:

Bank Name:
Account Number:
ABA number:
Phone Number:

17). Billing Dispute. If Buyer, in good faith, disputes an invoice, Buyer shall no later than the time of payment of the invoice notify Seller of the basis for the dispute and pay the portion of such statement not in dispute no later than the due date. If any amount withheld under dispute by Buyer is ultimately determined to be due to Seller, it shall be paid within one (1) Business Day after such determination, along with interest accrued at the Interest Rate from the original due date until the date paid. Inadvertent overpayments shall be returned by Seller upon request or deducted by Seller from subsequent payments, with interest accrued at the Interest Rate from the date originally paid until the date repaid or deducted. Interest Rate means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H.15; or (b) the maximum lawful interest rate.

18) Bankruptcy: In the event either party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or

has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), or (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, (collectively, "Bankruptcy Proceedings"), then the other party may, at its option and in its sole discretion anytime thereafter upon written notice, terminate this agreement in whole or in part.

19). **Material Adverse Change:** A Material Adverse Change occurs with respect to either Party or either Party's credit support provider if one exists, if (i) there is any material change in the condition (financial or otherwise), net worth, assets, properties or operations, or in economic conditions, which, taken as a whole, can reasonably be anticipated to impair the ability of such Party or such Party's credit support provider to fulfill its obligations; or (ii) there is reasonable grounds to believe that the creditworthiness of such Party has become unsatisfactory or its ability to perform under this Agreement has been materially impaired.

20). **Adequate Assurances:** If a Material Adverse Change has occurred, the Party seeking assurance ("Requesting Party") may make a written request of the other Party ("Providing Party") to provide Adequate Assurance in an amount determined in a commercially reasonable manner, and in a form acceptable to the Requesting Party. Upon receipt of the request, the Providing Party shall have one (1) Business Day to provide such Adequate Assurances. If not provided, the Requesting Party will be entitled to the remedies set forth below. If the Providing Party provides Adequate Assurance to the Requesting Party within one (1) Business Day, it is understood that the Providing Party shall not in fact have defaulted under this Agreement by incurring a Material Adverse Change. Adequate Assurance is defined as (i) cash (ii) letters of credit, or (iii) such other form of security acceptable to the Requesting Party.

21). **Event of Default:** An Event of Default ("Event of Default") with respect to a Party (the "Defaulting Party") shall mean: (i) the failure of the Defaulting Party to pay when due any required payment and such failure is not remedied within three (3) Business Days after written notice; (ii) the failure of the Defaulting Party to comply with its other material obligations under this Agreement and such failure is not remedied within three (3) Business Days after written notice; (iii) a Party or its credit support provider is subject to a Bankruptcy Proceeding; or (iv) a Party suffers a Material Adverse Change and fails to provide Adequate Assurances.

22). **Early Termination:** Upon the occurrence and during the continuance of an Event of Default, as to the Defaulting Party, the other Party (the "Non-Defaulting Party") may, in its sole discretion: (a) accelerate and liquidate the Parties' respective obligations by establishing and notifying the Defaulting Party of an early termination date (which shall be no earlier than the date such written notice is received and no later than twenty (20) days after the date of such notice) on which this and any other Coal Agreement shall terminate ("Early Termination Date"); and/or (b) withhold any payments due to the Defaulting Party until such Event of Default is cured; and/or (c) suspend performance of its obligations until such Event of Default is cured.

23). **Early Termination Payment:** If an Early Termination Date is established, the Non-Defaulting Party shall in good faith calculate its Gains (Gains means an amount equal to the present value of the economic benefit, if any, exclusive of Costs, to it resulting from the termination of its obligations with respect to a terminated Transaction, determined in a commercially reasonable manner) or Losses (Losses means an amount equal to the present value of the economic loss, if any, exclusive of Costs to it resulting from the termination of its obligations with respect to a terminated Transaction, determined in a commercially reasonable

manner), and Costs (Costs means any brokerage fees, commissions and other transactional costs and expenses reasonably incurred either by the Non-Defaulting Party as a result of terminating any hedges or other risk management contracts and/or entering into new arrangements in order to replace the early terminated Transaction(s), and Legal Costs incurred by the Non-Defaulting Party), resulting from the termination of this and any other Coal Agreement between the parties, aggregate such Gains or Losses, and Costs, and then notify the Defaulting Party of the net amount owed or owing. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within two (2) Business Days of its receipt of such notice pay the net amount to the Non-Defaulting Party, including interest from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from such early termination, the Non-Defaulting Party shall pay the net amount to the Defaulting Party in accordance with Paragraph 18 hereof. The Non-Defaulting Party shall determine its gains or losses, and costs, as of the Early Termination Date, or, if that is not possible, at the earliest date thereafter that is reasonably possible. If an Event of Default occurs, the Non-Defaulting Party may (at its election) set off any or all amounts that the Defaulting Party owes to the Non-Defaulting Party under this and any other agreement between the Parties.

24). **Netting and Setoff:** If the Parties are required to pay any amount on the same day or in the same month under this or any other Coal Agreement, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount may pay to the other Party the difference between the amounts owed. Each Party reserves to itself all rights, setoffs, counterclaims, combination of accounts, liens and other remedies and defenses which such Party has or may be entitled to (whether by operation of law or otherwise). The obligations to make payments under this Agreement and/or any other agreement between the Parties may be offset against each other, set off or recouped therefrom.

25). **Limitation of Liability:** No waiver of remedies or damages herein shall apply to claims of anticipatory repudiation or remedies thereof provided for by law except that neither Seller nor Buyer shall be liable to the other for consequential, incidental, punitive, exemplary, special or indirect damages, lost profits, or business interruption damages, whether in equity or by statute, in tort, or in contract, under any indemnity provision or otherwise.

26). **Insurance:** Seller shall maintain, or cause to be procured and maintained, Statutory Longshore and Harbor Workers' Compensation Act Insurance or Statutory State Workers' Compensation Insurance or Jones Act (Maritime Employers Liability), whichever is applicable, covering Seller's responsibilities with respect to all workers at the docks and fleets at all Origins utilized by Seller, and Comprehensive Marine Liability insurance (in any combination of primary and excess coverage), including but not limited to Protection and Indemnity Liability, Jones Act (Maritime Employers Liability), Pollution Liability, Full Collision Liability, Marine Operators Liability, Marine Contractual Liability, Wharfinger Liability, Towers' Liability, Hull and Cargo Legal Liability and Cost of Removal of Wreck and Cargo (including voluntary or statutory), where applicable, covering the docks and fleets at all Origins utilized by Seller in an amount not less than \$10,000,000 per occurrence. All such policies shall contain waivers of the insurers' subrogation rights against Carrier and their affiliates, subcontractors and vessels; and the Comprehensive Marine Liability policy shall name Carrier and its subcontractors as Additional Assureds.

27). **Title/ Risk of Loss:** Seller warrants good title to all Coal delivered hereunder, free and clear of all claims and encumbrance. Title and risk of loss shall pass to the Buyer upon delivery at the Delivery Point.

- 28). **Assignment:** Neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.
- 29). **Entire Agreement:** This Agreement is the final and entire agreement between the parties. No modification or amendment of this agreement shall be effective or binding unless set forth in writing signed by both parties.
- 30). **No Waiver:** Waiver of any breach of the Agreement shall not be construed as a waiver of any other breach.
- 31). **Governing Law:** This Agreement shall be construed in accordance with and governed by the laws of the State of New York, including without limitation the Uniform Commercial Code, without giving effect to the doctrine of conflict of laws.
- 32). **Confidentiality:** Each party hereby acknowledges that this Agreement contains confidential information that may place such a party at a competitive disadvantage if disclosed to the public. Therefore, the terms of this Agreement shall be preserved as confidential by the parties, except to the extent disclosure may be required by law, regulation or judicial administrative order, and the parties shall employ reasonable means to effectuate such confidentiality. However, disclosure of information is permitted to a Party's affiliates, directors, employees, regulators, counsel, auditors, agents, or partners in ownership of a generation facility, provided that it is necessary to show the information to such individuals or entities due to their relationship with the Party and such individuals and entities are informed of the confidential nature of the information.
- 33). **Notices:** Notices under this Agreement shall be given in writing and shall be effective when received.
- 34). **Limitation on warranty:** Except as expressly set forth herein, seller expressly disclaims any other representations or warranties, written or oral, express or implied, including merchantability, or fitness for any particular purpose.
- 35). **Recording:** Each Party hereby consents to recording of conversations without any further notice.
- 36). **The Parties agree to work toward finalizing a Master Coal Agreement.**
- 37). **Forward Contract:** The Parties agree that this Transaction constitutes a "forward contract" and that the Parties shall be "forward contract merchants" within the meaning of the United States Bankruptcy Code.
- 38). **Dispute Resolution**
- A. **Procedure.** If a dispute arises between the Parties relating to this Agreement, the Parties agree to use the following procedure prior to either Party pursuing other available remedies:

- (i) A meeting shall be held promptly between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.
- (ii) If within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, the dispute shall be submitted to binding arbitration.

B. Arbitration. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of New York shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) calendar days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by ULH&P and one shall be selected by Counterparty. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) calendar days, then either party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) calendar days after the date of the selection of the arbitrator(s) or within such period as the parties may otherwise agree. Each party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article. Both parties agrees that in the event of any dispute between the parties, it will continue to provide products or services without interruption.

39). On the Effective Date hereof, each Party represents and warrants to the other that:

- (a) The execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate or other organizational action on its part and do not violate or conflict with any law applicable to it, its organizational documents or any order or judgment of a court or other agency of government applicable to it or its assets;

(b) Its obligations under this Agreement are legally valid and binding obligations, enforceable in accordance with their terms;

(c) It, or its affiliates, have, or will diligently pursue, any and all necessary governmental and other third party permits, approvals and licenses required in connection with the execution, delivery and performance of this Agreement;

(d) There are no Bankruptcy Proceedings, as defined herein, pending or being contemplated by it or, to its knowledge, threatened against it;

(e) There are no known suits, proceedings, judgments rulings or orders by or before any court or any governmental authority that materially adversely affect its ability to perform its obligations under this Agreement;

(f) It is a "forward contract merchant" within the meaning of the United States Bankruptcy Code; and

(g) With respect to this Agreement, it, or its affiliates, are a producer, processor, commercial user or merchant handling Coal, and it is entering into such Agreement for purposes related to its business as such.

THE PARTIES, BY THEIR AUTHORIZED AGENTS, HEREBY EXECUTE THIS COAL SUPPLY AGREEMENT WHICH SHALL BE EFFECTIVE ON THE DATE FIRST ABOVE WRITTEN. FAILURE TO OBJECT WITHIN THREE (3) BUSINESS DAYS OF RECEIPT OF THIS AGREEMENT SHALL CONSTITUTE ACCEPTANCE.

Duke Energy Kentucky, LLC
BY: [Signature]
TITLE: Mayor Coal Proc
DATE: 12/27/06

CBS&C Inc.
BY: [Signature]
TITLE: PRESIDENT
DATE: 12-26-06

**Schedule 1
 Standard to Confirmation: Specifications**

The Coal delivered hereunder shall conform to the following specifications on an "as received" basis:

<u>Specification</u>	<u>Monthly Weighted Average Guarantee</u>	<u>Shipment Rejection Limits (Barge / Unit Train)</u>
BTU/LB.	11,500	< _____
MOISTURE	9.00%	> _____ %
ASH	12.25%	> _____ %
SULFUR	2.25%	> _____ %
SULFUR DIOXIDE (SO ₂)	_____ lb./MMBTU	> _____ lb./MMBTU
VOLATILE	32.0%	< _____ %
 Size (2" x 0"):		
-- Top size (inches)	< 2"	> _____ "
-- Fines (% by wgt)		
Passing 1/4" screen	< 45%	> _____ %
 GRINDABILITY (HGI)	 45	 < _____
 <u>ASH FUSION TEMPERATURE (°F) (ASTM D1857)</u>		
 <u>REDUCING ATMOSPHERE</u>		
Initial Deformation		min. _____
Softening (H=W)	2,200 °F	min. 2,000 °F
Hemispherical (H=1/2W)	_____	min. _____
Fluid	_____	min. _____

Note: As used herein > means greater than and < means less than.



ELLIOTT BATSON
Director - Coal Procurement
Duke Energy Corporation
Power Marketing & Fuels
526 South Church Street
Charlotte, NC 28202
Ph. 704 382 6132
Fax 704 382 4568

December 5, 2007

Mr. Bill Bray
President
CBS&C, Inc.
7000 Houston Road,
Bldg 200 Suite 17
Florence, KY 41017

Re: Coal Supply Agreement dated December 27, 2006 between Duke Energy Kentucky, Inc. ("Duke") and CBS&C Inc. ("CBS&C") for the supply of coal to East Bend Station (the "Agreement")

Dear Mr. Bray:

This is to confirm our agreement to amend the Agreement as follows:

1. The parties agree to extend the term of this Agreement for an additional 12 months, starting January 1, 2008 through December 31, 2008.
2. The parties agree to modify Section 7 by inserting the words "or operating" following the word "handling" in the second line in the first paragraph of Section 7.

All other terms and conditions of the Agreement not modified herein shall remain in full force and effect.

If CBS&C is in agreement with the above modifications to the Agreement, please so indicate by signing in the space provided below and returning an original to me at the address listed above.

Sincerely,

A handwritten signature in black ink that reads 'Elliott Batson'.

Elliott Batson
Director - Coal Procurement

Agreed and Accepted _____ this day of December, 2007
CBS & C Inc.

By: _____
Title: _____