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July 15, 2005

Mark R. Overstreet
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Ms. Beth O'Donnell
Executive Director
Public Service Commission of Kentucky
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602-0615

RECEIVED

JUL 15 2005

PUBLIC SERVICE
COMMISSION

Re: PSC Case No. 2004-00463

Dear Ms. O'Donnell:

Enclosed please find Kentucky Power's Supplemental Response to Hearing Request number 4. The contract was filed with the Court earlier this week.

Please call if you have any questions.

Sincerely yours,

STITES & HARBISON, PLLC

Mark R. Overstreet

Enclosure

cc: Errol K. Wagner

KE057.KE177:12755:1:FRANKFORT

**KPSC CASE NO. 2004-00463
HEARING DATE March 17, 2005
SUPPLEMENTAL RESPONSE**

**ITEM NO. 4
PAGE 1 OF 44
RECEIVED**

KENTUCKY POWER COMPANY

JUL 15 2005

PUBLIC SERVICE
COMMISSION

REQUEST:

When available, provide the "Amended and Restated" Pevler Coal Company Contract. In addition, provide a summary comparison of the terms of the "Amended and Restated" agreement with that of the original contract.

RESPONSE:

A copy of the executed agreement, which was filed with the Martin Circuit Court the week of July 11, 2005, is attached as Supplemental Exhibit A. The summary comparison also is attached as Supplemental Exhibits B and C.

KE057:KE177:12753:1:FRANKFORT

Witness: Stephen D. Baker

HUDDLESTON BOLEN^{LLP}

Huntington, WV | Charleston, WV | Ashland, KY
Richard J. Bolen
Direct Dial: 304-691-8420
E-Mail: rbolen@huddlestonbolen.com

July 11, 2005

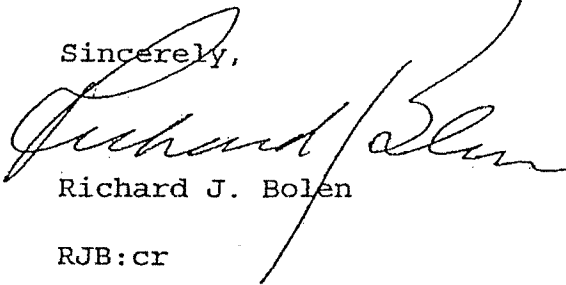
Honorable Daniel R. Sparks, Judge
Martin County Circuit Court
Commonwealth of Kentucky
P. O. Box 1219
Paintsville, KY 41240

Re: Czar Coal Corporation; Beechfork Processing, Inc.; and
Pelver Coal Sales Company, Inc. v. Kentucky Power Company
Civil Action No. 04-CI-00120

Dear Judge Sparks:

Enclosed is a proposed Final Order in the captioned action,
which counsel for all parties have approved for entry. If the
Order meets with your approval, we would appreciate it if you
would enter the same. Thanks very much.

Sincerely,



Richard J. Bolen

RJB:cr

Enclosure

cc: Karen J. Greenwell

FINAL ORDER

COMMONWEALTH OF KENTUCKY
MARTIN CIRCUIT COURT
CIVIL ACTION NO. 04-CI-00120

CZAR COAL CORPORATION;
BEECHFORK PROCESSING, INC.;
AND PEVLER COAL SALES
COMPANY, INC.,

PLAINTIFFS

v. **FINAL ORDER**

KENTUCKY POWER COMPANY,

DEFENDANT

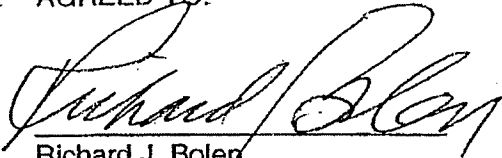
This day came the parties hereto by counsel and having represented that all matters in difference herein have been fully adjusted and settled, moved that this action be dismissed with prejudice, each party to pay its own costs and attorneys' fees, which motion the Court was of the opinion to and did grant.

It is therefore **ORDERED** by the Court that this cause be and the same is hereby **DISMISSED**, agreed settled with prejudice as to all matters declared upon, and with each party paying its own court costs and attorneys' fees.

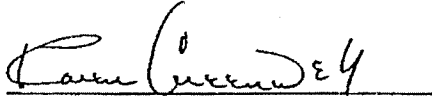
Dated this _____ day of _____, 2005.

Honorable Daniel R. Sparks, Judge

AGREED TO:



Richard J. Bolen
Huddleston Bolen LLP
611 Third Avenue
P. O. Box 2185
Huntington, WV 25722
304-529-6181
Counsel for Defendant



Karen J. Greenwell
Wyatt, Tarrant & Combs, LLP
250 West Main Street, Suite 1600
Lexington, KY 40507
859-233-2012
Counsel for Plaintiffs

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that the foregoing Final Order has been served upon the parties by mailing a true and correct copy to Richard J. Bolen, Huddleston Bolen LLP, 611 Third Avenue, P. O. Box 2185, Huntington, WV 25722, and Karen J. Greenwell, Wyatt, Tarrant & Combs, LLP, 250 West Main Street, Suite 1600, Lexington, KY 40507, on this _____ day of _____, 2005.

Clerk, Martin Circuit Court

30358239.2

SETTLEMENT AGREEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AGREEMENT AND RELEASE AGREEMENT (the "Settlement Agreement") is made and entered into effective as of this 24th day of March, 2005, by and among CZAR COAL CORPORATION, BEECH FORK PROCESSING, INC., and PEVLER COAL SALES COMPANY, INC., all of which are Kentucky corporations, (collectively "Plaintiffs"), and KENTUCKY POWER COMPANY, a Kentucky corporation ("Defendant") (Plaintiffs and Defendant being individually a "party" and collectively the "parties").

WITNESSETH:

WHEREAS, Plaintiffs and Defendant executed Coal Supply Agreement No. 03-30-99-903 as of February 1, 1999 which was subsequently amended on several occasions (as amended the "Agreement"); and

WHEREAS, a dispute developed between the Plaintiffs and Defendant regarding the interpretation and performance of the Agreement; and

WHEREAS, on May 27, 2004, Plaintiffs filed a Complaint in the Martin, Kentucky, Circuit Court in a civil action entitled Czar Coal Corporation, Beech Fork Processing, Inc., and Pevler Coal Sales Company, Inc., Plaintiff, v. Kentucky Power Company, Defendant, Civil Action No. 04-CI-00120, (the "Litigation") alleging *inter alia* the existence of a force majeure event that excused Plaintiffs from further performance of the Agreement; and

WHEREAS, on June 21, 2004, Defendant filed its Answer and Counterclaim in the Litigation stating in part that Plaintiffs have breached the Agreement; and

WHEREAS, Plaintiffs' affiliate, Argus Energy, LLC ("Argus") has subsequently acquired new coal reserves as further described in Amendment No. 2005-1 referenced below that will permit Argus to supply coal to Defendant; and

WHEREAS, Plaintiffs and Defendant wish to enter this Settlement Agreement in order to resolve any and all claims and disputes between them relating to the Agreement, including, without limitation, the Litigation.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Recitals Adopted. The recitals sets forth above are hereby incorporated into this Settlement Agreement and are made a part hereof.

2. Releases. Each of the Plaintiffs, for itself, and its parent and affiliated companies and its or their attorneys, agents, successors and assigns, hereby fully and forever release, remise, acquit and discharge Defendant and its parent and affiliated companies and its or their insurers, attorneys, agents, servants, employees, representatives, officers, directors, successors and assigns, from all claims, demands, damages, controversies, actions, rights of action, of whatsoever kind or nature, at law or in equity, known or unknown, which were asserted or which could have been asserted at any time in the Lawsuit or which arise out of or are related to the Agreement or any aspect thereof as of the execution of this Agreement.

Defendant, for itself, and its parent and affiliated companies and its or their attorneys, agents, successors and assigns hereby fully and forever release, remise, acquit and discharge each of the Plaintiffs and its and their insurers, attorneys, agents, servants, employees, representatives, officers, directors, successors and assigns from all claims, demands, damages, controversies, actions, rights of action, of whatsoever kind or nature, at law or in equity, known or unknown, which were asserted or which could have been asserted at any time in the Lawsuit or which arise out of or are related to the Agreement or any aspect thereof as of the execution of this Agreement.

3. Amendment No. 2005-1. In settlement of the Litigation, Argus and Defendant agree to and do hereby enter into Amendment No. 2005-1, Amended Restated Coal Supply Agreement No. 03-30-99-903, effective as of January 1, 2005, a copy of which is attached hereto and hereby made a part hereof, marked Exhibit A ("Amendment No. 2005-1").



4. Dismissal of Litigation. Within five (5) business days after the date hereof, the parties shall tender a proposed Final Order executed by counsel for Plaintiffs and Defendant with the Martin Circuit Court, substantially in the form attached hereto as Exhibit B, dismissing the Litigation, and any and all claims, counterclaims, or causes of action commenced or asserted therein as between Plaintiffs and Defendant, with prejudice and without fees, costs or sanctions to either party.

5. No Admission. The parties acknowledge and agree that the covenants, promises, recitals, definitions, representations, payments, releases, warranties and agreements contained in this Settlement Agreement are made pursuant to a settlement between the parties to compromise disputed claims, and do not constitute an admission of any fact or claims or of liability by either party, such liability having been expressly denied.

6. No Assignment of Claims. Each party specifically represents and warrants that it has not sold, assigned, transferred, conveyed or otherwise disposed of any right, title or interest to the Litigation to any party not a signatory to this Settlement Agreement and, further, that no other entity has or claims to have or is believed to have any such right, title or interest.

7. Payment of Expenses. Each party hereto agrees to pay all of its own out-of-pocket costs and expenses incurred in connection with the development, preparation and execution of this Settlement Agreement and all documents related hereto and any other documents prepared in connection therewith, including, in each case, without limitation, the fees and disbursements of its own counsel.

8. Notices. All notices, requests, consents and other communications hereunder shall be in writing, shall be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder, and shall be by any of the following methods: (a) made by facsimile transmission, (b) sent by recognized overnight courier, or (c) sent by registered or certified mail, return receipt requested, postage prepaid.

If to Plaintiffs:

Pevler Coal Sales Company, Inc.
P.O. Box 3368
Charleston, WV 25333
Attn: Mark Campbell

If to Defendant:

American Electric Power Service Corporation
155 W. Nationwide Blvd.
Columbus, OH 43215
Attn: Vice President -Coal

All notices, requests, consents and other communications hereunder shall be deemed to have been given (a) if made by facsimile transmission, at the time that receipt thereof has been acknowledged by electronic confirmation or otherwise, (b) if sent by overnight courier, on the next business day following the day such notice is delivered to the courier service, or (c) if sent by registered or certified mail, on the fifth (5th) business day following the day such mailing is sent.

9. Entire Agreement; Modifications and Amendments. This Settlement Agreement sets forth the entire understanding of the parties with respect to the matters set forth herein. The terms and provisions of this Settlement Agreement may be modified or amended only by written agreement executed by the parties hereto.

10. Interpretation. The parties hereto acknowledge they participated equally in drafting this Settlement Agreement, and agree that: (a) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Settlement Agreement, and (b) the terms and provisions of this Settlement Agreement shall be construed fairly as to all parties hereto and not in favor of or against any party, regardless of which party was generally responsible for the preparation of this Settlement Agreement.

11. Survival. The covenants, agreements, representations, warranties and other terms of this Settlement Agreement shall survive the execution and delivery of all documents and exhibits executed and delivered pursuant hereto.



12. Confidentiality. The parties and their respective affiliates shall keep confidential any and all matters relating to this Settlement Agreement, including its terms, except those readily obtainable from public information, requested by a regulatory commission, or otherwise required by law to be disclosed; provided, however, that prior to any such disclosure, the disclosing party gives the other party reasonable written notice to allow challenge or the seeking of protection, and in any event the parties shall make all reasonable efforts to minimize disclosure.

13. Governing Law. This Settlement Agreement shall be construed in accordance with the laws of the Commonwealth of Kentucky.

14. Authority of Signatories. Each person executing this Settlement Agreement individually and personally represents and warrants that he/she is duly authorized to execute and deliver the same on behalf of the entity for which he/she is duly authorized to execute and deliver the same on behalf of the entity for which he/she is signing and that this Settlement Agreement is binding upon that entity in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto, being duly authorized, have caused this Agreement to be executed as of the day and year first above written.

CZAR COAL CORPORATION

By: *James A. Booth*
Title: President

BEECH FORK PROCESSING, INC.

By: *James A. Booth*
Title: President

PEVLER COAL SALES COMPANY, INC.

By: *J. M. A. Carter*
Title: PRESIDENT

KENTUCKY POWER COMPANY

By: *C. Zebulq*
Title: VICE PRESIDENT

Argus Energy, LLC, hereby executes this Settlement Agreement to evidence its agreement to enter into Amendment No. 2005-1 referenced in Paragraph 3 of this Settlement Agreement.

ARGUS ENERGY, LLC

By: *James A. Booth*
Title: President

Date: Mar 31, 2005

M

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF PIKE)

The foregoing instrument was acknowledged before me this 31st day of March, 2005, by JAMES H. BOOTH as PRESIDENT of Czar Coal Corporation, a Kentucky corporation, on behalf of said corporation.

My Commission Expires:
2-15-09

Linda Morley
NOTARY PUBLIC

[SEAL]

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF PIKE)

The foregoing instrument was acknowledged before me this 31st day of March, 2005, by JAMES H. BOOTH as PRESIDENT of Beech Fork Processing, Inc., a Kentucky corporation, on behalf of said corporation.

My Commission Expires:
2-15-09

Linda Morley
NOTARY PUBLIC

[SEAL]

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF PIKE)

The foregoing instrument was acknowledged before me this 31st day of March, 2005, by J. MARK CAMPBELL as PRESIDENT of Pevler Coal Sales Company, Inc., a Kentucky corporation, on behalf of said corporation.

My Commission Expires:
2-15-09

Linda Morley
NOTARY PUBLIC

[SEAL]

M
4

STATE OF Ohio
COUNTY OF Franklin) SS
)

The foregoing instrument was acknowledged before me this 24th day of March, 2005, by C.E. Zebula as Vice President of Kentucky Power Company, a Kentucky corporation, on behalf of said corporation.

My Commission Expires:


NOTARY PUBLIC

[SEAL]


DAVID M. GOWEN
NOTARY PUBLIC - STATE OF OHIO
LIFETIME COMMISSION

COMMONWEALTH OF KENTUCKY)
COUNTY OF PIKE) SS
)

The foregoing instrument was acknowledged before me this 31st day of March, 2005, by JAMES H. Booth as PRESIDENT of Argus Energy, LLC, a Kentucky limited liability corporation, on behalf of said corporation.

My Commission Expires:

2-15-09


NOTARY PUBLIC

[SEAL]



EXHIBIT B

FINAL ORDER

COMMONWEALTH OF KENTUCKY
MARTIN CIRCUIT COURT
CIVIL ACTION NO. 04-CI-00120

CZAR COAL CORPORATION;
BEECHFORK PROCESSING, INC.;
AND PEVLER COAL SALES
COMPANY, INC.,

PLAINTIFFS

v. **FINAL ORDER**

KENTUCKY POWER COMPANY,

DEFENDANT

This day came the parties hereto by counsel and having represented that all matters in difference herein have been fully adjusted and settled, moved that this action be dismissed with prejudice, each party to pay its own costs and attorneys' fees, which motion the Court was of the opinion to and did grant.

It is therefore **ORDERED** by the Court that this cause be and the same is hereby **DISMISSED**, agreed settled with prejudice as to all matters declared upon, and with each party paying its own court costs and attorneys' fees.

Dated this _____ day of _____, 2005.

Honorable Daniel R. Sparks, Judge

AGREED TO:

Richard J. Bolen
Huddleston Bolen LLP
611 Third Avenue
P. O. Box 2185
Huntington, WV 25722
304-529-6181
Counsel for Defendant

Karen J. Greenwell
Wyatt, Tarrant & Combs, LLP
250 West Main Street, Suite 1600
Lexington, KY 40507
859-233-2012
Counsel for Plaintiffs

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that the foregoing Final Order has been served upon the parties by mailing a true and correct copy to Richard J. Bolen, Huddleston Bolen LLP, 611 Third Avenue, P. O. Box 2185, Huntington, WV 25722, and Karen J. Greenwell, Wyatt, Tarrant & Combs, LLP, 250 West Main Street, Suite 1600, Lexington, KY 40507, on this _____ day of _____, 2005.

Clerk, Martin Circuit Court

30358239.2



AEP: America's Energy Partner®

Exhibit A, Page 1 of 11

AEP Coal Supply Agreement No: 03-30-99-903
Original Contract Dated: February 1, 1999
Between Kentucky Power Company ("Buyer") and Pevler Coal Sales Company, Inc.,
Beechfork Processing, Inc., and Czar Coal Corporation (collectively "Seller")

Amendment No. 2005-1
Amended and Restated Coal Supply Agreement

Seller: Argus Energy, LLC
P.O. Box 416
Kenova, WV 25530
Attn: J. Mark Campbell
Phone: (304) 345-1276
Fax: (304) 345-1278

Buyer: Kentucky Power Company
155 West Nationwide Boulevard
Columbus, OH 43215
Attn: Jason Rusk
Phone: (614) 583-7275
Fax: (614) 583-1606

Commodity: Crushed, bituminous coal, washed, containing no synthetic fuels, substantially free from any extraneous material, with no intermediate sizes to be added or removed and otherwise meeting the specifications of this Contract.

Term: January 1, 2005 through December 31, 2006

Quantity: 600,000 tons, delivered by truck, at the rate of 25,000 tons per month (each day's deliveries shall constitute a "Shipment").

Price: Except as set forth hereafter in Quality Adjustments:
\$56.00 per ton fixed FOB Plant during calendar year 2005
\$49.00 per ton fixed FOB Plant during calendar year 2006

Quality: Weighted average, as-received basis in accordance with ASTM standards ("Standards") for each Shipment, as follows:

<u>Characteristic:</u>	<u>Contracted Standard:</u>	<u>Half-Month Suspension Limit:</u>	<u>Applicable Lot Suspension Limit:</u>
Btu/lb:	12,000	11,900 minimum	11,800 minimum
Sulfur (%):	1.00	1.00 maximum	1.05 maximum
Moisture (%):	8.00	9.00 maximum	10.00 maximum
Ash (%):	13.50	13.50 maximum	13.50 maximum
Volatile Matter (%):	30	Not Applicable	30 minimum
Hardgrove Grindability:	45 HGI	Not Applicable	42 minimum
Ash Fusion Temp. (H=1/2W °F Red. Atm.)	2,700	Not Applicable	2,650 minimum

Sizing: 2 inches topsize, nominal, with maximum 60% passing one-quarter inch square wire cloth sieve to be determined on the basis of the primary cutter of the mechanical sampling system.

Source: Kiah Creek Mine, located in Wayne and Mingo Counties, West Virginia:

Delivery Point: FOB Buyer's Big Sandy Plant or, at Buyer's election upon 20 days prior notice to the month such election would take place, Seller's Wayne County Terminal located at Milepost 7.7 on the Big Sandy River.

Quality Adjustments: If coal delivered under this Contract varies from the Quality specifications in the Contract (the "Specifications"), but Buyer does not exercise its rejection rights under Section 5(A) of the Amended and Restated Coal Supply Agreement Terms and Conditions attached, quality adjustments shall be calculated pursuant to the formulas set forth herein. Within ten days after the end of each Half-Month during the Term, the quality adjustments, if any, shall be netted against each other and the net quality adjustment, as appropriate, for all Shipments of coal during such Half-Month shall be determined by Buyer, 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 Section 6 of the Amended and Restated Coal Supply Agreement Terms and Conditions attached.

Exhibit A, Page 2 of 11

Quality Adjustments (Continued):

(A) If the weighted average calorific value of the coal unloaded and taken into account hereunder in a Half-Month is not equal to the Contracted Half-Month Weighted Average Btu/lb., then there shall be an amount added to the Contract Price (if the calculated number is positive) or subtracted from the Contract Price (if such number is negative), as determined by the following formula, to arrive at the adjusted price for such coal:

$$\text{Amount Per Ton of Increase or Decrease for Calorific Value} = \frac{(\text{Actual Btu} - \text{Contracted Btu})}{\text{Contracted Btu}} \times \text{Contract Price}$$

provided, however, no premium will be paid for Calorific Value which exceeds the Contracted Half-Month Weighted Average Btu/lb. by 500 Btu per pound.

(B) Additionally, an amount of three dollars (\$3.00) per ton shall be deducted from the Contract Price for each Shipment of coal having a Sulfur value greater than the Sulfur Applicable Lot Suspension Limit.

Payment:

On or before the tenth (10th) calendar day following each half-month period and upon receipt by Buyer of Seller's invoice, Buyer will pay to Seller the invoice amount. Payment shall be made by wire transfer or electronic means in immediately available United States funds for all coal received for which title has transferred from Seller to Buyer. Seller shall provide Buyer all pertinent remittance instructions on each invoice (including the Contract Number referenced on the first page of this Contract). Overdue payments shall accrue interest at the prime rate of interest for United States dollars as published from time to time during such period under the section titled, "Money Rates" by *The Wall Street Journal* or any successor publication, plus two percent [2%] per annum, but not to exceed the maximum applicable lawful interest rate (the "Interest Rate") from the due date until paid.

Seller's account information:

Argus Energy, LLC
National City Bank
ABA # 083000056
Bank Account # 754080211

If any party in good faith reasonably disputes an invoice, it shall provide a written explanation specifying in detail the basis for the dispute and pay any undisputed portion no later than the due date. Upon resolution of any dispute involving an invoice, any additional amount owing shall be paid with interest at the Interest Rate. If any party fails to pay amounts under this Contract when due, unless such amount is the subject of a dispute as provided above, or is excused by Force Majeure, in addition to the rights and remedies provided in this Contract, the aggrieved party shall have the right to suspend performance under this Contract until such amounts plus interest have been paid, and/or exercise any remedy available at law or in equity to enforce payment of such amount plus interest at the Interest Rate defined herein.

If applicable, Seller shall include on its invoice the statement "Seller certifies that (insert number) of tons were mined in Virginia," such statement to be separately signed by Seller.

Other Terms:

The Payment provision and Quality Adjustments set forth above shall be in lieu of those provisions set forth in the attached Amended and Restated Coal Supply Agreement Terms and Conditions. Any tons shipped under Fuel Contract No. 03-30-05-003 will relieve Seller of its obligation to ship the same quantity of coal under this Contract.



**AMENDED AND RESTATED
COAL SUPPLY AGREEMENT TERMS AND CONDITIONS**

1) SCHEDULING, DELIVERY & TITLE AND RISK OF LOSS

Unless otherwise provided in the Amended and Restated Coal Supply Agreement (together with these Amended and Restated Coal Supply Agreement Terms and Conditions the "Contract"), Buyer shall advise Seller of its desired loading dates and delivery schedule. The parties will work together in good faith to agree on a reasonable and mutually acceptable delivery schedule within the Term and within each month during the Term. Unless otherwise specified in the Contract, Buyer shall designate to Seller the scheduling, routing and method of Shipments of coal purchased under this Contract. Seller shall cause coal sold hereunder to be properly loaded into the transport vehicle (i.e. railcars, barges, trucks, etc.) for delivery to Buyer, provided that Buyer has provided Seller with applicable loading instructions (including minimum and maximum weights) no less than 24 hours prior to the arrival of Buyer's transport vehicle. The delivery schedule specified in the Contract or as designated by Buyer in absence of such in the Contract is binding on both Buyer and Seller and may only be changed by mutual written agreement.

Seller represents and warrants that it has title to all coal sold hereunder and the same is shipped free and clear of all liens, encumbrances, and claims of all third parties. Title to and risk of loss of coal conforming to this Contract shall pass to Buyer as follows:

- a) For barge deliveries, as the loaded barges are pulled from the Delivery Point.
- b) For rail deliveries, as the loaded unit train or single car shipment is pulled from the Delivery Point.
- c) For truck deliveries, upon the coal being delivered and dumped at the plant or other consigned destination.
- d) For all Non-Conforming Shipments (as hereinafter defined) title to and risk of loss of coal shall revert back to Seller immediately upon any rejection or nonacceptance by Buyer as provided elsewhere in this Contract.

Seller and Buyer shall each indemnify, defend, and save harmless the other party, and its Affiliates and their respective officers, directors, agents, and employees from and against any liabilities, losses, claim, damages, penalties, causes of action, or suits arising out of or in connection with its failure to comply with its obligations under this Contract.

Seller shall indemnify, save harmless, and defend Buyer and its Affiliates and their officers, directors, agents, and employees (all referred to in this sentence as "Buyer") from and against any liabilities, expenses, losses, claims, damages, penalties, causes of action, or suits, and all other obligations whatsoever, including without limitation, all judgments rendered against and all fines and penalties imposed upon Buyer (whether severally, or in combination with others) and any reasonable attorneys' fees and any other costs of litigation (all of which are hereinafter referred to as "Liabilities") arising out of injuries or death to any person(s), or damage to any property, caused by or related to, in whole or in part the railcars (or barges, if applicable) furnished hereunder (as applicable), between the time that such railcars (or barges, if applicable) are delivered to Seller or Seller's agent and the time that custody thereof is properly returned to Buyer (or to Buyer's agent carrier, if applicable), or if deliveries are by truck, arising out of injuries or death to any person(s), or damage to any property, caused by or related to, in whole or in part, to trucking of coal, whether such coal is trucked by Seller or Seller's trucking contractor(s). Any injury or death to person(s) or damage to property as hereinbefore described shall be reported to Buyer by Seller immediately upon the occurrence thereof, and confirmed in writing as soon as possible.

FOR TRUCK DELIVERIES -- Seller, at its expense, shall have coverage of the insurance specified below, which shall be placed with insurance carrier(s) acceptable to Buyer, and shall maintain this insurance at all times during performance of this Contract:

- (i) Coverage for the legal liability of Seller under the workers' compensation and occupational disease law of the state(s) in which the work is (are) performed. Seller shall be contributor to the state workers' compensation fund(s) and shall furnish a certificate to that effect. If Seller is a legally permitted and qualified self-insurer, it may furnish proof that it is such a self-insurer in lieu of submitting proof of insurance;
- (ii) Employer's liability insurance in an amount not less than \$2,000,000.00 for each accident;
- (iii) Commercial general liability insurance with limits of not less than \$2,000,000.00 for each occurrence and aggregate;
- (iv) Commercial automobile liability insurance with a limit for bodily injury and property damage of not less than \$2,000,000.00 each accident;



3

Exhibit A, Page 4 of 11

(v) Seller shall obtain waivers of subrogation on all their insurance, whether required by this Contract or in excess of the Contract requirements. Such waivers shall be for the benefit of Buyer.

2) **WEIGHING**

All Deliveries: For all non-PRB transactions, Buyer shall determine the weight of the coal delivered hereunder at its expense using its rail, truck, or belt scales, as applicable. For all PRB transactions, Seller shall determine the weight of the coal delivered hereunder at its expense using its rail scales or batch weighing system, as applicable. The party responsible for weighing is hereafter referred to as the weighing party and the other as the non-weighing party.

(A) The accuracy of the weighing party's rail scale(s), truck scale(s), or batch weighing system, as applicable, shall be maintained to within plus or minus two tenths of one percent ($\pm 0.20\%$). The weighing party's rail scale(s), truck scale(s), or batch weighing system, as applicable, shall be calibrated at least once every six months in accordance with the guidelines established by NIST. The calibration shall be performed by a qualified third party (e.g., the rail carrier), using such equipment as deemed appropriate by such third party. At the non-weighing party's request, which may be made from time to time, the weighing party shall inform the non-weighing party of the results of such testing and calibration. It shall be the responsibility of the weighing party to arrange and schedule scale calibrations when required.

(B) The accuracy of the weighing party's belt scales shall be maintained to within plus or minus one half of one percent ($\pm 0.50\%$) accuracy. The weighing party's belt scales shall be tested and calibrated at least once each month in accordance with the guidelines outlined by NIST or other procedures which shall be mutually acceptable to Seller and Buyer. At the non-weighing party's request, which may be made from time to time, the weighing party shall inform the non-weighing party of the results of such testing and calibration. It shall be the responsibility of the weighing party to arrange and schedule scale calibrations when required.

(C) If the weighing party's scales are discovered to be outside of acceptable tolerance ranges ($\pm 0.20\%$ for rail scale(s), truck scales, or batch weighing system, and $\pm 0.50\%$ for conveyor belt scales), then an appropriate adjustment will be made to the tonnage and invoiced retroactively to the date of the most recent calibration or 30 calendar days prior to the calibration which was found in error, whichever is later.

Barge Draft Surveys: If there is no certified belt scale system at the Delivery Point, and if the parties specifically agree that weights shall be determined hereunder by draft survey taken at the Delivery Point, then all such draft surveys shall be conducted by an independent surveyor (certified commercial marine surveyor for vessels) experienced in the conduct of draft surveys selected by mutual agreement of the parties. In cases where (i) there is no certified belt scale system at the Delivery Point or in absence of a certified belt scale system and a draft survey is not taken at the Delivery Point or (ii) the Delivery Point is the ultimate destination, weights shall be determined at the destination by Buyer.

Weights determined in accordance with this Section 2 shall be deemed accepted as correct (absent manifest error) and shall govern all invoicing and payments hereunder. Unless otherwise specified, the costs of weighing shall be for the account of the weighing party.

Irrespective of which party's weights govern for payment hereunder, Seller shall properly weigh each shipment hereunder and report such weights to Buyer within 24 hours after the coal has been loaded for shipment. Seller's weights shall be reported to the recipients designated by and in the manner specified by Buyer.

3) **SAMPLING AND ANALYSIS**

Buyer shall perform all sampling and analysis of coal for non-PRB transactions unless otherwise agreed by the parties. Seller shall perform all sampling and analysis of coal for PRB transactions. The party responsible for sampling and analysis of coal is hereafter referred to as the sampling party and the other as the non-sampling party.

(A) Notwithstanding the foregoing, Seller shall sample the coal or shall provide for the coal to be sampled as it is loaded, analyze the sample(s) so obtained, and notify Buyer and the consigned destination of the short proximate (calorific value per pound, percent moisture, percent ash, percent sulfur, and with respect to PRB coal, percent sodium oxide) average analytical results of each Shipment. Seller's notification shall include its weight determination and the identifying number(s) of each Shipment, and shall be provided within 24 hours after the coal

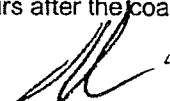
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is loaded for shipment, or within 36 hours should the Shipment be loaded on a Saturday. Seller's analysis shall be reported to the recipients designated by and in the manner specified by Buyer. Seller shall immediately notify Buyer if either its sampling system or its independent commercial laboratory becomes unavailable or unable, for any reason, to provide the short proximate analysis. Upon such occurrence(s), Buyer and Seller shall establish procedures for sampling and/or analyzing the coal shipped hereunder during such time that Seller's sampling system and/or its independent commercial laboratory are unable to provide the short proximate analysis for such coal. Such short proximate analysis shall not be used for payment purposes hereunder.

(B) All sampling and analysis performed hereunder shall be performed by the sampling party at its expense and shall comply with the governing ASTM procedures and specifications in effect at the time of such sampling and analysis. Coal hereunder shall be sampled during the loading/unloading process by the sampling party, prior to its commingling with other coals. The coal samples shall then be prepared and analyzed in Buyer's laboratory, or, if Seller is the sampling party, by an independent commercial laboratory. The non-sampling party may observe the unloading, sampling, sample preparation and analysis hereunder. Each coal sample collected by the sampling party shall be properly divided into at least two subsamples. One subsample shall be analyzed by the applicable laboratory for the governing contractual analysis. The remaining sample is to be sealed in an airtight container and sent to the non-sampling party at the non-sampling party's request provided such request is made in writing within 30 days after the date of such sampling. In the event that the non-sampling party does not so request, the sampling party shall retain the sample for no less than 30 days.

(C) If Seller's analysis is used for payment purposes hereunder, all sampling shall be performed using a mechanical sample system that has been certified within the previous 24 calendar months by an independent commercial laboratory mutually acceptable to the parties to be free of bias and that is properly operated and maintained. In case of disagreement as to the results of the analysis reported by the Seller, Buyer may request analysis of Buyer's sample by an independent referee laboratory mutually selected by the parties and the final governing analysis shall be the referee analysis. The cost of analyzing Buyer's sample shall be borne by Buyer.

Seller's analysis shall be reported to the recipients designated by and in the manner specified by Buyer. For purposes of determining moisture hereunder, the two-stage procedure as defined in ASTM D3302 shall be used.

Coal received, unloaded, and taken into account that is not sampled or is sampled but not analyzed shall be taken into account as follows: If during any Half-Month period at least fifty percent (by weight) of coal delivered at a respective consigned destination during such period has been sampled and analyzed, then the weighted average analytical results of such samples shall be applicable to all coal delivered to such consigned destination during such Half-Month period. If more than 50% (by weight) of coal delivered at a consigned destination during any such Half-Month period has not been sampled and analyzed, then the weighted average analytical results of the portion of sampled and analyzed coal shall apply to such portion, and the weighted average analytical result of the last preceding Half-Month in which at least 50% (by weight) of the coal delivered to such consigned destination was sampled and analyzed shall be applicable to such portion of the coal delivered which was not sampled and/or was not analyzed for such Half-Month period.

4) **QUALITY ADJUSTMENTS**

If coal delivered under this Contract varies from the Quality specifications in the Contract (the "Specifications"), but Buyer does not exercise its rejection rights under Section 5(A) below, quality adjustments shall be calculated pursuant to the formulas set forth in this Section 4. Within ten days after the end of each Half-Month during the Term, the quality adjustments, if any, shall be netted against each other and the net quality adjustment, as appropriate, for all Shipments of coal during such Half-Month shall be determined by Buyer, 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 Section 6.

(A) If the weighted average calorific value of the coal unloaded and taken into account hereunder in a Half-Month is not equal to the Contracted Half-Month Weighted Average Btu/lb., then there shall be an amount added to the Contract Price (if the calculated number is positive) or subtracted from the Contract Price (if such number is negative), as determined by the following formula, to arrive at the adjusted price for such coal:

$$\text{Amount Per Ton of Increase or Decrease for Calorific Value} = \frac{(\text{Actual Btu} - \text{Contracted Btu})}{\text{Contracted Btu}} \times \text{Contract Price}$$

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provided, however, no premium will be paid for Calorific Value which exceeds the Contracted Half-Month Weighted Average Btu/lb. by 300 Btu per pound.

(B) If the weighted average SO₂ content of the coal unloaded and taken into account hereunder in a Half-Month is tested to have an SO₂ content greater than the SO₂ Contracted Half-Month Weighted Average Specification, the Contract Price for such coal will be reduced by an amount per ton determined in accordance with the following formula:

$$\frac{((SO_2 \text{ Contracted} - \text{Actual lbs. } SO_2/\text{mmbtu}) * \text{Actual Btu/lb.} * E)}{1,000,000}$$

E = the SO₂ Monthly Price (or if not published, the average of the SO₂ Daily Prices for the applicable calendar month of delivery) of allowances expressed in dollars per ton of SO₂ in the table entitled "AIR Daily Emission Allowance Indices" published in AIR Daily, or its successor publication, for such calendar month of delivery as first published following such month.

Additionally, an amount of three dollars (\$3.00) per ton shall be deducted from the Contract Price for each Shipment of coal having an SO₂ value greater than the Shipment Suspension Limit.

(C) For each Shipment of coal tested to have an ash content greater than the Contracted Half-Month Weighted Average Specification, the Contract Price for coal in such Shipment will be decreased by \$0.15 for each 0.5% ash increment, or portion thereof, by which the Shipment's ash content is tested to be above the Contracted Half-Month Weighted Average Specification. (For example, if the Contracted Half-Month Weighted Average is 13.00% and a Shipment has a percent ash value of 13.70, then the Contract Price decrease shall be \$0.30 per ton.)

5) **REJECTION AND SUSPENSION RIGHTS**

(A) If any Shipment of coal fails to conform to any requirement specified in the Contract (a "Non-Conforming Shipment"), Buyer shall have the option, exercisable by notice to Seller of either (i) rejecting such Non-Conforming Shipment at the Delivery Point or en route, but prior to unloading from Transporter's equipment or (ii) accepting any Non-Conforming Shipment with a Contract Price adjustment agreed to between Seller and Buyer. Should Buyer exercise such right of rejection, it shall notify Seller by E-mail or verbally upon discovery of the nonconformance, any verbal notification to be promptly confirmed in writing. If Buyer fails to exercise its rejection rights hereunder as to a Non-Conforming Shipment, Buyer shall be deemed to have waived such rights with respect to that Non-Conforming Shipment only. If Buyer 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, replace the rejected coal as soon as possible, provided that Buyer gives written notice to Seller of Buyer's desire for replacement coal within 30 days after rejection of the Non-Conforming Shipment.

(B) If there are three Non-Conforming Shipments, whether rejected or not, under this Contract in any three-month period or if two out of four consecutive Shipments under this Contract are Non-Conforming Shipments, then Buyer may upon notice to Seller suspend the receipt of future Shipments (except Shipments already loaded or in transit to Buyer) under this Contract. A waiver by Buyer of the suspension right for any one period shall not constitute a waiver for subsequent periods. If Seller, within ten days of its receipt of such notice, provides reasonable assurances in writing to Buyer that future Shipments under this Contract will conform to the Specifications and Buyer has accepted such assurances (such acceptance not to be unreasonably withheld, Shipments shall resume and any tonnage deficiencies shall be made up within the Term at Buyer's option. If (i) Seller fails to provide such acceptable assurances within such ten day period, or (ii) after such assurances are provided and for a period of three months thereafter, any Shipment of coal fails to meet any of Buyer's rejection rights under this Section for the Rejection Limit parameter for which there was a prior suspension under this Contract, then such event shall constitute an Event of Default as provided in Section 11 hereof.

(C) If any of the Half-Month weighted average coal qualities fail to conform to the Half-Month Suspension specifications, then Buyer may suspend the receipt of future Shipments (except Shipments already loaded or in transit to Buyer) under this Contract. A waiver by Buyer of the suspension right for any one period shall not constitute a waiver for subsequent periods. If Seller, within ten days of its receipt of such notice, provides reasonable assurances in writing to Buyer that future Shipments under this Contract will conform to the



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Specifications and Buyer has accepted such assurances (such acceptance not to be unreasonably withheld, Shipments shall resume and any tonnage deficiencies shall be made up within the Term at Buyer's option. If (i) Seller fails to provide such acceptable assurances within such ten day period, or (ii) after such assurances are provided and for a period of six months thereafter, any Shipment of coal fails to meet any of the Suspension limits under this Section for any of the Half-Month Suspension limits for which there was a prior suspension under this Contract, then such event shall constitute an Event of Default as provided in Section 11 hereof.

(D) Buyer may terminate this Contract or terminate deliveries from the Source if Buyer in its reasonable judgment determines through operating experience that the coal therefrom causes unsatisfactory performance at the Plant of consignment, even if such coal meets the requirements and specifications of this Contract. In such event, Buyer shall provide Seller with written notice thereof, specifying the basis of such unsatisfactory performance.

6) **PAYMENT**

Buyer shall submit to Seller the weighted average analytical and pricing data for all coal unloaded from the first through the fifteenth calendar day of each month, and from the sixteenth through the last calendar day of each month, within five working days after each such period. Thereafter, Seller shall submit to Buyer, within two working days of receipt of such information, an invoice (referenced by the Contract Number and the applicable transport vehicle numbers), covering such Half-Month unloadings. Buyer will pay to Seller the invoice amount on or before the 20th calendar day following the Half-Month period, provided Seller's invoice is submitted in compliance with the preceding two sentences. Payment shall be made by wire transfer or electronic means in immediately available United States funds for all coal received, unloaded, taken into account, and accepted hereunder. Seller shall provide Buyer all pertinent remittance instructions on each invoice. Overdue payments shall accrue interest (the prime rate of interest for United States Dollars 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.

If any party in good faith reasonably disputes an invoice, it shall provide a written explanation specifying in detail the basis for the dispute and pay any undisputed portion no later than the due date. Upon resolution of any dispute involving an invoice, any additional amount owing shall be paid with interest at the Interest Rate. If any party fails to pay amounts under this Contract when due, unless such amount is the subject of a dispute as provided above, or is excused by Force Majeure, in addition to the rights and remedies provided in this Contract, the aggrieved party shall have the right to suspend performance under this Contract until such amounts plus interest have been paid, and/or exercise any remedy available at law or in equity to enforce payment of such amount plus interest at the Interest Rate defined herein.

If applicable, Seller shall include on its invoice the statement "Seller certifies that (insert number) of tons were mined in Virginia," such statement to be separately signed by Seller.

7) **ASSIGNMENT/DELEGATION**

This Contract shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. However, no party shall assign this Contract or any of its rights or obligations hereunder without the prior written consent of the other party. Notwithstanding the foregoing, any party may, without the need for consent from the other party (and without relieving itself from liability hereunder), (a) transfer, sell, pledge, encumber or assign this Contract or the accounts, revenues or proceeds hereof or thereof in connection with any financing or other financial arrangements or (b) transfer or assign this Contract to an Affiliate of such party; *provided, however*, that no such assignment shall in any way relieve the assignor from liability for full performance under this Contract. Any such assignee shall assume and agree to be bound by the terms and conditions of this Contract.

If AEP or one of its Affiliates is the Buyer under this Contract, it shall have the right to assign this Contract, in whole or in part, to a producer of synthetic fuel (as defined in Section 29 of the Internal Revenue Code of 1986, as amended, hereafter referred to as "Synthetic Fuel"). Should such assignment occur, Seller also agrees upon the request of AEP or its Affiliate to enter into a new agreement with such Synthetic Fuel producer on substantially the same terms and conditions as provided in this Contract with respect to all or part of the coal to be purchased hereunder. In such event, AEP or its Affiliate shall be excused from its obligations under this Contract to purchase coal hereunder to the extent of the quantities provided for in such new agreement.

Written consent to one or more assignments shall not be construed as waiving the necessity of obtaining written consent to other and/or additional assignments.

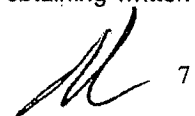
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8) **FORCE MAJEURE**

To the extent either party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Contract and such party (the "Claiming Party") gives notice and details, orally and confirmed promptly in writing, of the Force Majeure to the other party as soon as practicable (but in no event later than 30 days after the occurrence thereof), then the Claiming Party shall be excused from the performance of its obligations. The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party that are excused by Force Majeure. Failure to give such notice and furnish such information within the time specified shall be deemed a waiver of all rights under this Article for such period of time during which notice was not given. Buyer and Seller shall exercise reasonable efforts to mitigate or eliminate the conditions which have caused the Force Majeure condition, provided, however, nothing herein contained shall be construed as requiring Seller or Buyer to accede to any demands of labor, or labor unions, or suppliers, or other parties which Seller or Buyer considers unacceptable. The Claiming Party claiming Force Majeure shall furnish the non-Claiming Party a monthly statement by the 15th day of the calendar month setting forth the amount of tonnage not shipped or to be reduced because of Force Majeure causes asserted during the second preceding calendar month.

Except as set forth in this paragraph, no suspension or reduction by reasons of Force Majeure shall invalidate the remainder of this Contract but, on the removal of the cause, shipments shall resume at the specified rate. If an event of Force Majeure persists for (i) a continuous period of 60 days or (ii) an aggregate of 75 days in any twelve month period or during the Term of this Contract (if the Term is less than twelve months), then, at any time thereafter during the Force Majeure period, the non-Claiming Party shall have the option, upon three days' prior written notice, to terminate this Contract and the obligations of the parties thereunder.

In the event of a Force Majeure, delivery of the affected quantity of coal shall not be made up except at Buyer's sole discretion.

If Seller claims Force Majeure under this Contract and has obligations to provide coal of a similar type and quality as the coal under other coal sales agreements, or if Buyer claims Force Majeure and has obligations to purchase coal of a similar type and quality as the coal under other coal sales agreements, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated by the party claiming Force Majeure on a pro rata basis among this Contract and such other coal purchase or sales agreements involving coal of a similar type and quality as the coal, to the extent contractually permitted by such agreements. Without limiting the generality of this Article, in the event of a Force Majeure event which causes a partial or total curtailment of electrical generation from or electrical generating capacity at the consigned destination or partial or total curtailment of transmission or distribution of electricity therefrom, Buyer shall at its option, be relieved under this Article from its obligation to accept up to the pro rata (based on such partial curtailment) quantity or entire (based on such total curtailment) quantity of Seller's coal scheduled for delivery for the period during which such event or occurrence exists or existed.

9) **WAIVER**

The failure of Buyer or Seller to insist in any one or more instances upon strict performance of any of the provisions of this Contract or to take advantage of any of its rights hereunder shall not be construed as a future waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect for the term of this Contract.

10) **FINANCIAL RESPONSIBILITY**

Either party shall have the right, but not the obligation, to request from the other party or its guarantor, as applicable, annual financial statements and quarterly financial statements.

11) **EVENT OF DEFAULT AND DAMAGES**

If an Event of Default (as hereafter defined) occurs with respect to a party or its guarantor (the "Defaulting Party") at any time during the term of this Contract, the other party (the "Non-Defaulting Party") may, in its sole discretion, do any or all of the following: (i) establish a date (which date shall be no earlier than the date that such notice is given to the Defaulting Party and no later than 20 days from notice) ("Early Termination Date") on which this Contract shall terminate, (ii) withhold any payments due in respect of this Contract, (iii) suspend performance under this Contract and/or (iv) exercise such other remedies as may be provided in this Contract. An event of default with respect to any party ("Event of Default") shall mean any of the following: (i) the failure of either party or its guarantor to make when due, any payment required hereunder if such failure is not remedied within five Business Days after


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notice of such failure is given to the Defaulting Party by the Non-Defaulting Party; (ii) the failure of either party or its guarantor to comply with any or all of its other respective obligations in good faith as herein set forth and such noncompliance is not cured within twenty Business Days after notice thereof to defaulting party (or if cure is not possible within such period, good faith efforts to effect cure have been undertaken and continued, but such noncompliance is not cured within forty-five calendar days after the date of the notice of noncompliance); or (iii) failure of either party to provide adequate assurances of due performance satisfactory to the Non-Defaulting Party of its ability to perform its further obligations under this Contract within five Business Days of a reasonable written request by the Non-Defaulting Party; (iv) either party (a) filing a petition in bankruptcy, (b) having such a petition filed against it, (c) becoming otherwise insolvent or unable to pay its debts as they become due; (v) the failure of a party's guarantor, if any, to perform any covenant set forth in its guaranty, or such guaranty shall expire or be terminated or shall cease to guarantee the obligations of such party hereunder, or such guarantor shall become subject to any of the events specified in (iv) (a), (b) or (c); or (vi) an event described in the last sentence of Section 5(B) shall have occurred. If this Contract terminates on an Early Termination Date, the Non-Defaulting Party shall calculate, in a good faith commercially reasonable manner, the Settlement Amount as of the Early Termination Date as soon as is reasonably practicable and shall promptly notify the Defaulting Party of the amount thereof.

"Settlement Amount" shall mean the present value of the single net aggregate amount for the remaining term of the Contract, including any exercised option period, of any Losses or Gains, expressed in United States dollars, which the Non-Defaulting Party incurs as a result of the early termination of this Contract in accordance with this Section 11, based upon the then current replacement value of this Contract, the amounts of any unpaid invoices, and the amount for coal delivered but not yet billed. In calculating the Settlement Amount, the Non-Defaulting Party shall set off all amounts that are due to the Defaulting Party against such Settlement Amount so that the Settlement Amount shall be netted to a single liquidated amount. Any collateral being held by the Non-Defaulting Party shall be setoff against the amount owed to the Non-Defaulting Party. If the Defaulting Party is holding collateral posted by the Non-Defaulting Party, then the Non-Defaulting Party will have the right to set off that amount against any payment to be made to the Defaulting Party.

The Non-Defaulting Party shall provide the Defaulting Party with an explanation of how it calculated the Settlement Amount, as well as supporting calculations and documentation reasonably requested by the Defaulting Party. The Non-Defaulting Party shall use good faith commercially reasonable efforts to mitigate any Losses it is entitled to hereunder. The Defaulting Party shall have the right to audit (through a third party independent auditor mutually agreed to by the parties) the calculation of all of the Non-Defaulting Party's Gains and Losses.

If the present value of the Non-Defaulting Party's aggregate Losses (net of any amounts due to the Defaulting Party) exceed the present value of its aggregate Gains, all as finally determined in accordance with the preceding provisions of this section, the Defaulting Party shall, within fifteen Business Days of such final determination, pay the Settlement Amount to the Non-Defaulting Party, including interest thereon at the Interest Rate from the Early Termination Date until paid in full. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Settlement Amount, the Defaulting Party will provide its calculations to the Non-Defaulting Party within fifteen Business Days of receipt of calculation from the Non-Defaulting Party. The Defaulting Party shall nevertheless pay to the Non-Defaulting Party the undisputed portion of the Settlement Amount.

Notwithstanding any provision to the contrary contained in this Contract, the Non-Defaulting Party shall not be required to pay the Defaulting Party any amount under this Section 11, until the Non-Defaulting Party receives confirmation satisfactory to it, in its reasonable discretion (which may include an opinion of its counsel), that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Contract (or otherwise) have been fully and finally performed.

12) **FORWARD CONTRACT**

Buyer and Seller each acknowledge that it is a "forward contract merchant" and that this Contract constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

13) **NETTING AND SETOFF**

If Buyer and Seller are required to pay any amount on the same day or in the same month, 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 shall pay to the party owed 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

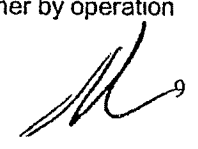


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of law or otherwise). The obligations to make payments under this Contract and/or any other contract between the parties hereto may be offset against each other, set off or recouped therefrom.

14) CONFIDENTIALITY

The parties and their respective affiliates shall keep confidential any and all matters relating to this Contract, except those readily obtainable from public information, requested by a regulatory commission, or otherwise required by law to be disclosed.

15) ENTIRE AGREEMENT; MODIFICATION

This Contract, together with any attachments or exhibits specifically referenced herein, constitutes the entire contract between the Seller and the Buyer with respect to the subject matter hereof, supersedes all prior oral or written representations and contracts, and may be modified only by a written amendment signed by Buyer and Seller.

16) COMPLIANCE WITH LAW

Seller and Buyer shall make good faith efforts to comply with the provisions of all applicable federal, state, and other governmental laws and any applicable order and/or regulations, or any amendments or supplements thereto, which have been, or may at any time be, issued by a governmental agency.

17) GOVERNING LAW; WAIVER OF JURY TRIAL; UCC; VENUE, GOVERNMENT CONTRACTOR COMPLIANCE

This Contract shall be construed, enforced, and performed in accordance with the laws of the Commonwealth of Kentucky without regard to its conflicts of law rules. Each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Contract. Except as otherwise provided for herein, the provisions of the Uniform Commercial Code ("UCC") of the Commonwealth of Kentucky shall govern this Contract and coal provided hereunder shall be deemed to be "goods" for purposes of the UCC. Each party hereby submits to the exclusive jurisdiction of state or federal courts located in Franklin County, Kentucky, and all appellate courts therefrom and waives any objection which it may have at any time to the laying of venue of any proceedings brought in such court, waives any claim that such proceedings have been brought in an inconvenient forum, and further waives the right to object, with respect to such proceedings, that such court does not have jurisdiction over such party.

Unless exempted, Seller shall comply with the equal employment opportunity clause in Section 202 of Executive Order 11246 and all applicable rules, regulations, and relevant orders pertaining to Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and Section 4212 of the Vietnam Era Readjustment Assistance Act of 1974, as amended.

18) NOTICES

Notices provided for or required under this Contract may be exercised verbally, but shall be confirmed in writing as soon as practicable. The parties shall be legally bound from the date the notification is exercised in writing (including by electronic mail). Notices provided for or required in writing herein shall be delivered by hand or electronic means or transmitted by facsimile or sent by certified mail, postage prepaid, return receipt requested, or by overnight mail or courier.

Notices hand delivered or delivered by electronic means, shall be deemed delivered by the close of the Business Day on which it was hand delivered or delivered by electronic means (unless hand delivered or transmitted by electronic means after the close of the Business Day in which case it shall be deemed received by the close of the next Business Day). Notices provided by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of a successful transmission. If the day on which such facsimile is received is not a Business Day or is after five p.m. Eastern Prevailing Time on a Business Day, then such facsimile shall be deemed to have been received on the following Business Day. Notices provided by certified mail, postage prepaid, return receipt requested, or by overnight mail or courier, shall be deemed delivered upon mailing.

19) DEFINITIONS

The following definitions and any terms defined internally in this Contract shall apply to this Contract and all notices and communications made pursuant to this Contract.

"AEP" means American Electric Power Service Corporation, as agent.

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"Affiliate" means with respect to any entity, any other entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such entity. 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.

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

"Business Day" means any day on which Federal Reserve member banks in New York City, New York are open for business, and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

"Contract Price" means the price in United States dollars per ton (unless otherwise specified in the Contract) to be paid by Buyer to Seller for purchase of coal and any other proper charges pursuant to this Contract.

"Eastern Prevailing Time" means Eastern Standard Time or Eastern Daylight Savings Time in effect in New York City, New York, as the case may be on the relevant date.

"Force Majeure" means an event or circumstance which prevents (in whole or in part) one party (the "Claiming Party") from performing its obligations under this Contract, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided, or, if the Claiming Party is Seller, which Seller is unable in good faith to obtain a substitute acceptable to Buyer therefor. Force Majeure includes, but is not limited to, an event or occurrence beyond the control of Buyer, such as without limitation, acts of God, war, insurrection, riots, nuclear disaster, strikes, labor disputes, threats of violence, labor and material shortages, fires, explosions, floods, river freeze-ups, breakdowns or damage to mines, plants, equipment, or facilities (including a forced outage or an extension of a scheduled outage of equipment or facilities to make repairs to avoid breakdowns thereof or damage thereto), interruptions to or slowdowns in transportation, railcar shortages, barge shortages, embargoes, orders, or acts of civil or military authority, laws, regulations, or administrative rulings, or total or partial interruptions of Buyer's operations which are due to any enforcement action or other administrative or judicial action arising from an environmental law or regulation. Force Majeure shall not be based on: (1) Buyer's inability economically to use or resell the coal purchased hereunder; (2) adverse geological or mining conditions; (3) the Seller's ability to sell the coal at a price greater than the Contract Price; or (4) Seller's inability to economically produce or obtain the coal.

"Gains" means, with respect to a party, an amount equal to the present value of the economic benefit, if any, to it resulting from the termination of its obligations with respect to this Contract, determined in a commercially reasonable manner.

"Half-Month" means the first 15 days of a calendar month or the 16th through the last calendar day of a calendar month, as applicable.

"Letters of Credit" means one or more irrevocable, transferable, standby letter of credit, issued by a major United States commercial bank or the United States branch office of a foreign bank, reasonably acceptable to the beneficiary with, in either case, a senior unsecured credit rating of at least (a) "A-" by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. ("S&P"), and "A3" by Moody's Investors Service, Inc. ("Moody's"), if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's, but not both.

"Losses" means, with respect to a party, an amount equal to the present value of the economic loss, if any, to it resulting from the termination of its obligations with respect to this Contract, determined in a commercially reasonable manner, but do not include incidental or consequential damages.

"NIST" means the National Institute of Standards and Technology Handbook #44.

"PRB" means the Powder River Basin located in the States of Montana and Wyoming.

"Performance Assurance" means collateral in the form of either cash or Letters of Credit or such other security of the type and amount requested by the party demanding Performance Assurance.

"Shipment" means, as applicable, one unit trainload or at Buyer's election a composite of two or more unit trainloads, the aggregate of single railcars loaded on any one day (only where single car rates apply), one barge or at Buyer's election a composite of two or more barges, one vessel load, or the aggregate of the truckloads that are loaded on any one day in accordance with the applicable transportation specifications.

"Transporter" means the entity or entities 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.



11



RECEIVED

JUN 21 2005

American Electric Power
155 W. Nationwide Blvd.
Columbus, OH 43215
AEP.com

Mr. J. Mark Campbell
Pevler Coal Sales Company, Inc.
50 Carriage Road
Charleston, WV 25314

Received via FedEx cables

June 17, 2005

Re: Settlement Agreement and Release Agreement (the "Settlement Agreement") and Amendment No. 2005-1, the Amended and Restated Coal Supply Agreement No. 03-30-99-903 (the "Coal Agreement")

Dear Mr. Campbell:

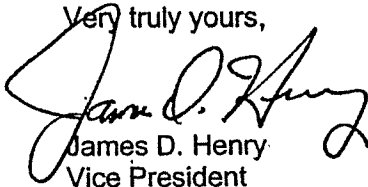
On March 24, 2005, Czar Coal Corporation, Beech Fork Processing, Inc. and Pevler Coal Sales Company, Inc. (collectively "Pevler") and Kentucky Power Company ("KPCo") entered into the Settlement Agreement. Section 3 of the Settlement Agreement states that in settlement of certain litigation, Pevler's affiliate, Argus Energy, LLC, and KPCo "do hereby enter into . . . [the Coal Agreement]," which was referred to as Exhibit A.

Subsequently, Argus and KPCo have agreed to various modifications to the Coal Agreement and now desire to substitute the attached Coal Agreement (marked as Exhibit A) for the previous Exhibit A. Because Argus and KPCo previously entered into the Coal Agreement by virtue of their executing the Settlement Agreement and have agreed to substitute the attached document for Exhibit A, Argus and KPCo are not now executing the Coal Agreement.

Enclosed are five originals of the revised Coal Agreement, Exhibit A.

Please return one completed set of all documents (as executed) to Melissa Willard at AEP, 155 West Nationwide Boulevard, Columbus, OH, 43215, by overnight delivery. I understand that the documents, including the Settlement Agreement and revised Exhibit A, will be filed with the Martin County, Kentucky, Circuit Court.

Very truly yours,


James D. Henry
Vice President

Enclosures

*614 583-6116
MELISSA WILLARD*

SETTLEMENT AGREEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AGREEMENT AND RELEASE AGREEMENT (the "Settlement Agreement") is made and entered into effective as of this 24th day of March, 2005, by and among CZAR COAL CORPORATION, BEECH FORK PROCESSING, INC., and PEVLER COAL SALES COMPANY, INC., all of which are Kentucky corporations, (collectively "Plaintiffs"), and KENTUCKY POWER COMPANY, a Kentucky corporation ("Defendant") (Plaintiffs and Defendant being individually a "party" and collectively the "parties").

WITNESSETH:

WHEREAS, Plaintiffs and Defendant executed Coal Supply Agreement No. 03-30-99-903 as of February 1, 1999 which was subsequently amended on several occasions (as amended the "Agreement"); and

WHEREAS, a dispute developed between the Plaintiffs and Defendant regarding the interpretation and performance of the Agreement; and

WHEREAS, on May 27, 2004, Plaintiffs filed a Complaint in the Martin, Kentucky, Circuit Court in a civil action entitled Czar Coal Corporation, Beech Fork Processing, Inc., and Pevler Coal Sales Company, Inc., Plaintiff, v. Kentucky Power Company, Defendant, Civil Action No. 04-CI-00120, (the "Litigation") alleging *inter alia* the existence of a force majeure event that excused Plaintiffs from further performance of the Agreement; and

WHEREAS, on June 21, 2004, Defendant filed its Answer and Counterclaim in the Litigation stating in part that Plaintiffs have breached the Agreement; and

WHEREAS, Plaintiffs' affiliate, Argus Energy, LLC ("Argus") has subsequently acquired new coal reserves as further described in Amendment No. 2005-1 referenced below that will permit Argus to supply coal to Defendant; and

WHEREAS, Plaintiffs and Defendant wish to enter this Settlement Agreement in order to resolve any and all claims and disputes between them relating to the Agreement, including, without limitation, the Litigation.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Recitals Adopted. The recitals sets forth above are hereby incorporated into this Settlement Agreement and are made a part hereof.

2. Releases. Each of the Plaintiffs, for itself, and its parent and affiliated companies and its or their attorneys, agents, successors and assigns, hereby fully and forever release, remise, acquit and discharge Defendant and its parent and affiliated companies and its or their insurers, attorneys, agents, servants, employees, representatives, officers, directors, successors and assigns, from all claims, demands, damages, controversies, actions, rights of action, of whatsoever kind or nature, at law or in equity, known or unknown, which were asserted or which could have been asserted at any time in the Lawsuit or which arise out of or are related to the Agreement or any aspect thereof as of the execution of this Agreement.

Defendant, for itself, and its parent and affiliated companies and its or their attorneys, agents, successors and assigns hereby fully and forever release, remise, acquit and discharge each of the Plaintiffs and its and their insurers, attorneys, agents, servants, employees, representatives, officers, directors, successors and assigns from all claims, demands, damages, controversies, actions, rights of action, of whatsoever kind or nature, at law or in equity, known or unknown, which were asserted or which could have been asserted at any time in the Lawsuit or which arise out of or are related to the Agreement or any aspect thereof as of the execution of this Agreement.

3. Amendment No. 2005-1. In settlement of the Litigation, Argus and Defendant agree to and do hereby enter into Amendment No. 2005-1, Amended Restated Coal Supply Agreement No. 03-30-99-903, effective as of January 1, 2005, a copy of which is attached hereto and hereby made a part hereof, marked Exhibit A ("Amendment No. 2005-1").



4. Dismissal of Litigation. Within five (5) business days after the date hereof, the parties shall tender a proposed Final Order executed by counsel for Plaintiffs and Defendant with the Martin Circuit Court, substantially in the form attached hereto as Exhibit B, dismissing the Litigation, and any and all claims, counterclaims, or causes of action commenced or asserted therein as between Plaintiffs and Defendant, with prejudice and without fees, costs or sanctions to either party.

5. No Admission. The parties acknowledge and agree that the covenants, promises, recitals, definitions, representations, payments, releases, warranties and agreements contained in this Settlement Agreement are made pursuant to a settlement between the parties to compromise disputed claims, and do not constitute an admission of any fact or claims or of liability by either party, such liability having been expressly denied.

6. No Assignment of Claims. Each party specifically represents and warrants that it has not sold, assigned, transferred, conveyed or otherwise disposed of any right, title or interest to the Litigation to any party not a signatory to this Settlement Agreement and, further, that no other entity has or claims to have or is believed to have any such right, title or interest.

7. Payment of Expenses. Each party hereto agrees to pay all of its own out-of-pocket costs and expenses incurred in connection with the development, preparation and execution of this Settlement Agreement and all documents related hereto and any other documents prepared in connection therewith, including, in each case, without limitation, the fees and disbursements of its own counsel.

8. Notices. All notices, requests, consents and other communications hereunder shall be in writing, shall be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder, and shall be by any of the following methods: (a) made by facsimile transmission, (b) sent by recognized overnight courier, or (c) sent by registered or certified mail, return receipt requested, postage prepaid.

If to Plaintiffs:

Pevler Coal Sales Company, Inc.
P.O. Box 3368
Charleston, WV 25333
Attn: Mark Campbell

If to Defendant:

American Electric Power Service Corporation
155 W. Nationwide Blvd.
Columbus, OH 43215
Attn: Vice President -Coal

All notices, requests, consents and other communications hereunder shall be deemed to have been given (a) if made by facsimile transmission, at the time that receipt thereof has been acknowledged by electronic confirmation or otherwise, (b) if sent by overnight courier, on the next business day following the day such notice is delivered to the courier service, or (c) if sent by registered or certified mail, on the fifth (5th) business day following the day such mailing is sent.

9. Entire Agreement; Modifications and Amendments. This Settlement Agreement sets forth the entire understanding of the parties with respect to the matters set forth herein. The terms and provisions of this Settlement Agreement may be modified or amended only by written agreement executed by the parties hereto.

10. Interpretation. The parties hereto acknowledge they participated equally in drafting this Settlement Agreement, and agree that: (a) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Settlement Agreement, and (b) the terms and provisions of this Settlement Agreement shall be construed fairly as to all parties hereto and not in favor of or against any party, regardless of which party was generally responsible for the preparation of this Settlement Agreement.

11. Survival. The covenants, agreements, representations, warranties and other terms of this Settlement Agreement shall survive the execution and delivery of all documents and exhibits executed and delivered pursuant hereto.



12. Confidentiality. The parties and their respective affiliates shall keep confidential any and all matters relating to this Settlement Agreement, including its terms, except those readily obtainable from public information, requested by a regulatory commission, or otherwise required by law to be disclosed; provided, however, that prior to any such disclosure, the disclosing party gives the other party reasonable written notice to allow challenge or the seeking of protection, and in any event the parties shall make all reasonable efforts to minimize disclosure.

13. Governing Law. This Settlement Agreement shall be construed in accordance with the laws of the Commonwealth of Kentucky.

14. Authority of Signatories. Each person executing this Settlement Agreement individually and personally represents and warrants that he/she is duly authorized to execute and deliver the same on behalf of the entity for which he/she is duly authorized to execute and deliver the same on behalf of the entity for which he/she is signing and that this Settlement Agreement is binding upon that entity in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto, being duly authorized, have caused this Agreement to be executed as of the day and year first above written.

CZAR COAL CORPORATION

By: James A Booth
Title: President

BEECH FORK PROCESSING, INC.

By: James A Booth
Title: President

PEVLER COAL SALES COMPANY, INC.

By: [Signature]
Title: PRESIDENT

KENTUCKY POWER COMPANY

By: CS Zebulq
Title: VICE PRESIDENT

Argus Energy, LLC, hereby executes this Settlement Agreement to evidence its agreement to enter into Amendment No. 2005-1 referenced in Paragraph 3 of this Settlement Agreement.

ARGUS ENERGY, LLC

By: James A Booth
Title: President
Date: Mar 31, 2005

[Signature]

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF PIKE)

The foregoing instrument was acknowledged before me this 31st day of March, 2005, by JAMES H. BOOTH as PRESIDENT of Czar Coal Corporation, a Kentucky corporation, on behalf of said corporation.

My Commission Expires:
2-15-09

Linda Morley
NOTARY PUBLIC

[SEAL]

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF PIKE)

The foregoing instrument was acknowledged before me this 31st day of March, 2005, by JAMES H. BOOTH as PRESIDENT of Beech Fork Processing, Inc., a Kentucky corporation, on behalf of said corporation.

My Commission Expires:
2-15-09

Linda Morley
NOTARY PUBLIC

[SEAL]

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF PIKE)

The foregoing instrument was acknowledged before me this 31st day of March, 2005, by J. MARK CAMPBELL as PRESIDENT of Pevler Coal Sales Company, Inc., a Kentucky corporation, on behalf of said corporation.

My Commission Expires:
2-15-09

Linda Morley
NOTARY PUBLIC

[SEAL]

M
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STATE OF Ohio
COUNTY OF Franklin

) SS
)

The foregoing instrument was acknowledged before me this 24th day of March, 2005, by C.E. Zebula as Vice President of Kentucky Power Company, a Kentucky corporation, on behalf of said corporation.

My Commission Expires:

[Signature]
NOTARY PUBLIC

[SEAL]

DEBRA M. COLEMAN
NOTARY PUBLIC, STATE OF OHIO
LIFETIME COMMISSION

COMMONWEALTH OF KENTUCKY
COUNTY OF PIKE

)
) SS
)

The foregoing instrument was acknowledged before me this 31st day of March, 2005, by JAMES H. Booth as PRESIDENT of Argus Energy, LLC, a Kentucky limited liability corporation, on behalf of said corporation.

My Commission Expires:

[Signature]
NOTARY PUBLIC

[SEAL]

EXHIBIT B

FINAL ORDER

COMMONWEALTH OF KENTUCKY
MARTIN CIRCUIT COURT
CIVIL ACTION NO. 04-CI-00120

CZAR COAL CORPORATION;
BEECHFORK PROCESSING, INC.;
AND PEVLER COAL SALES
COMPANY, INC.,

PLAINTIFFS

v. **FINAL ORDER**

KENTUCKY POWER COMPANY,

DEFENDANT

This day came the parties hereto by counsel and having represented that all matters in difference herein have been fully adjusted and settled, moved that this action be dismissed with prejudice, each party to pay its own costs and attorneys' fees, which motion the Court was of the opinion to and did grant.

It is therefore **ORDERED** by the Court that this cause be and the same is hereby **DISMISSED**, agreed settled with prejudice as to all matters declared upon, and with each party paying its own court costs and attorneys' fees.

Dated this _____ day of _____, 2005.

Honorable Daniel R. Sparks, Judge

AGREED TO:

Richard J. Bolen
Huddleston Bolen LLP
611 Third Avenue
P. O. Box 2185
Huntington, WV 25722
304-529-6181
Counsel for Defendant

Karen J. Greenwell
Wyatt, Tarrant & Combs, LLP
250 West Main Street, Suite 1600
Lexington, KY 40507
859-233-2012
Counsel for Plaintiffs

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that the foregoing Final Order has been served upon the parties by mailing a true and correct copy to Richard J. Bolen, Huddleston Bolen LLP, 611 Third Avenue, P. O. Box 2185, Huntington, WV 25722, and Karen J. Greenwell, Wyatt, Tarrant & Combs, LLP, 250 West Main Street, Suite 1600, Lexington, KY 40507, on this _____ day of _____, 2005.

Clerk, Martin Circuit Court

30358239.2



AEP: America's Energy Partner®

Exhibit A, Page 1 of 11

AEP Coal Supply Agreement No: 03-30-99-903
Original Contract Dated: February 1, 1999
Between Kentucky Power Company ("Buyer") and Pevler Coal Sales Company, Inc.,
Beechfork Processing, Inc., and Czar Coal Corporation (collectively "Seller")

Amendment No. 2005-1
Amended and Restated Coal Supply Agreement

Seller: Argus Energy, LLC
P.O. Box 416
Kenova, WV 25530
Attn: J. Mark Campbell
Phone: (304) 345-1276
Fax: (304) 345-1278

Buyer: Kentucky Power Company
155 West Nationwide Boulevard
Columbus, OH 43215
Attn: Jason Rusk
Phone: (614) 583-7275
Fax: (614) 583-1606

Commodity: Crushed, bituminous coal, washed, containing no synthetic fuels, substantially free from any extraneous material, with no intermediate sizes to be added or removed and otherwise meeting the specifications of this Contract.

Term: January 1, 2005 through December 31, 2006

Quantity: 600,000 tons, delivered by truck, at the rate of 25,000 tons per month (each day's deliveries shall constitute a "Shipment").

Price: Except as set forth hereafter in Quality Adjustments:
\$56.00 per ton fixed FOB Plant during calendar year 2005
\$49.00 per ton fixed FOB Plant during calendar year 2006

Quality: Weighted average, as-received basis in accordance with ASTM standards ("Standards") for each Shipment, as follows:

<u>Characteristic:</u>	<u>Contracted Standard:</u>	<u>Half-Month Suspension Limit:</u>	<u>Applicable Lot Suspension Limit:</u>
Btu/lb:	12,000	11,900 minimum	11,800 minimum
Sulfur (%):	1.00	1.00 maximum	1.05 maximum
Moisture (%):	8.00	9.00 maximum	10.00 maximum
Ash (%):	13.50	13.50 maximum	13.50 maximum
Volatile Matter (%):	30	Not Applicable	30 minimum
Hardgrove Grindability:	45 HGI	Not Applicable	42 minimum
Ash Fusion Temp. (H=1/2W °F Red. Atm.)	2,700	Not Applicable	2,650 minimum

Sizing: 2 inches topsize, nominal, with maximum 60% passing one-quarter inch square wire cloth sieve to be determined on the basis of the primary cutter of the mechanical sampling system.

Source: Kiah Creek Mine, located in Wayne and Mingo Counties, West Virginia.

Delivery Point: FOB Buyer's Big Sandy Plant or, at Buyer's election upon 20 days prior notice to the month such election would take place, Seller's Wayne County Terminal located at Milepost 7.7 on the Big Sandy River.

Quality Adjustments: If coal delivered under this Contract varies from the Quality specifications in the Contract (the "Specifications"), but Buyer does not exercise its rejection rights under Section 5(A) of the Amended and Restated Coal Supply Agreement Terms and Conditions attached, quality adjustments shall be calculated pursuant to the formulas set forth herein. Within ten days after the end of each Half-Month during the Term, the quality adjustments, if any, shall be netted against each other and the net quality adjustment, as appropriate, for all Shipments of coal during such Half-Month shall be determined by Buyer, 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 Section 6 of the Amended and Restated Coal Supply Agreement Terms and Conditions attached.

Exhibit A, Page 2 of 11

**Quality
Adjustments
(Continued):**

(A) If the weighted average calorific value of the coal unloaded and taken into account hereunder in a Half-Month is not equal to the Contracted Half-Month Weighted Average Btu/lb., then there shall be an amount added to the Contract Price (if the calculated number is positive) or subtracted from the Contract Price (if such number is negative), as determined by the following formula, to arrive at the adjusted price for such coal:

$$\text{Amount Per Ton of Increase or Decrease for Calorific Value} = \frac{(\text{Actual Btu} - \text{Contracted Btu})}{\text{Contracted Btu}} \times \text{Contract Price}$$

provided, however, no premium will be paid for Calorific Value which exceeds the Contracted Half-Month Weighted Average Btu/lb. by 500 Btu per pound.

(B) Additionally, an amount of three dollars (\$3.00) per ton shall be deducted from the Contract Price for each Shipment of coal having a Sulfur value greater than the Sulfur Applicable Lot Suspension Limit.

Payment:

On or before the tenth (10th) calendar day following each half-month period and upon receipt by Buyer of Seller's invoice, Buyer will pay to Seller the invoice amount. Payment shall be made by wire transfer or electronic means in immediately available United States funds for all coal received for which title has transferred from Seller to Buyer. Seller shall provide Buyer all pertinent remittance instructions on each invoice (including the Contract Number referenced on the first page of this Contract). Overdue payments shall accrue interest at the prime rate of interest for United States dollars as published from time to time during such period under the section titled, "Money Rates" by *The Wall Street Journal* or any successor publication, plus two percent [2%] per annum, but not to exceed the maximum applicable lawful interest rate (the "Interest Rate") from the due date until paid.

Seller's account information:

Argus Energy, LLC
National City Bank
ABA # 083000056
Bank Account # 754080211

If any party in good faith reasonably disputes an invoice, it shall provide a written explanation specifying in detail the basis for the dispute and pay any undisputed portion no later than the due date. Upon resolution of any dispute involving an invoice, any additional amount owing shall be paid with interest at the Interest Rate. If any party fails to pay amounts under this Contract when due, unless such amount is the subject of a dispute as provided above, or is excused by Force Majeure, in addition to the rights and remedies provided in this Contract, the aggrieved party shall have the right to suspend performance under this Contract until such amounts plus interest have been paid, and/or exercise any remedy available at law or in equity to enforce payment of such amount plus interest at the Interest Rate defined herein.

If applicable, Seller shall include on its invoice the statement "Seller certifies that (insert number) of tons were mined in Virginia," such statement to be separately signed by Seller.

**Other
Terms:**

The Payment provision and Quality Adjustments set forth above shall be in lieu of those provisions set forth in the attached Amended and Restated Coal Supply Agreement Terms and Conditions. Any tons shipped under Fuel Contract No. 03-30-05-003 will relieve Seller of its obligation to ship the same quantity of coal under this Contract.





AEP: America's Energy Partner®

Exhibit A, Page 3 of 11

**AMENDED AND RESTATED
COAL SUPPLY AGREEMENT TERMS AND CONDITIONS**

1) SCHEDULING, DELIVERY & TITLE AND RISK OF LOSS

Unless otherwise provided in the Amended and Restated Coal Supply Agreement (together with these Amended and Restated Coal Supply Agreement Terms and Conditions the "Contract"), Buyer shall advise Seller of its desired loading dates and delivery schedule. The parties will work together in good faith to agree on a reasonable and mutually acceptable delivery schedule within the Term and within each month during the Term. Unless otherwise specified in the Contract, Buyer shall designate to Seller the scheduling, routing and method of Shipments of coal purchased under this Contract. Seller shall cause coal sold hereunder to be properly loaded into the transport vehicle (i.e. railcars, barges, trucks, etc.) for delivery to Buyer, provided that Buyer has provided Seller with applicable loading instructions (including minimum and maximum weights) no less than 24 hours prior to the arrival of Buyer's transport vehicle. The delivery schedule specified in the Contract or as designated by Buyer in absence of such in the Contract is binding on both Buyer and Seller and may only be changed by mutual written agreement.

Seller represents and warrants that it has title to all coal sold hereunder and the same is shipped free and clear of all liens, encumbrances, and claims of all third parties. Title to and risk of loss of coal conforming to this Contract shall pass to Buyer as follows:

- a) For barge deliveries, as the loaded barges are pulled from the Delivery Point.
- b) For rail deliveries, as the loaded unit train or single car shipment is pulled from the Delivery Point.
- c) For truck deliveries, upon the coal being delivered and dumped at the plant or other consigned destination.
- d) For all Non-Conforming Shipments (as hereinafter defined) title to and risk of loss of coal shall revert back to Seller immediately upon any rejection or nonacceptance by Buyer as provided elsewhere in this Contract.

Seller and Buyer shall each indemnify, defend, and save harmless the other party, and its Affiliates and their respective officers, directors, agents, and employees from and against any liabilities, losses, claim, damages, penalties, causes of action, or suits arising out of or in connection with its failure to comply with its obligations under this Contract.

Seller shall indemnify, save harmless, and defend Buyer and its Affiliates and their officers, directors, agents, and employees (all referred to in this sentence as "Buyer") from and against any liabilities, expenses, losses, claims, damages, penalties, causes of action, or suits, and all other obligations whatsoever, including without limitation, all judgments rendered against and all fines and penalties imposed upon Buyer (whether severally, or in combination with others) and any reasonable attorneys' fees and any other costs of litigation (all of which are hereinafter referred to as "Liabilities") arising out of injuries or death to any person(s), or damage to any property, caused by or related to, in whole or in part the railcars (or barges, if applicable) furnished hereunder (as applicable), between the time that such railcars (or barges, if applicable) are delivered to Seller or Seller's agent and the time that custody thereof is properly returned to Buyer (or to Buyer's agent carrier, if applicable), or if deliveries are by truck, arising out of injuries or death to any person(s), or damage to any property, caused by or related to, in whole or in part, to trucking of coal, whether such coal is trucked by Seller or Seller's trucking contractor(s). Any injury or death to person(s) or damage to property as hereinbefore described shall be reported to Buyer by Seller immediately upon the occurrence thereof, and confirmed in writing as soon as possible.

FOR TRUCK DELIVERIES – Seller, at its expense, shall have coverage of the insurance specified below, which shall be placed with insurance carrier(s) acceptable to Buyer, and shall maintain this insurance at all times during performance of this Contract:

- (i) Coverage for the legal liability of Seller under the workers' compensation and occupational disease law of the state(s) in which the work is (are) performed. Seller shall be contributor to the state workers' compensation fund(s) and shall furnish a certificate to that effect. If Seller is a legally permitted and qualified self-insurer, it may furnish proof that it is such a self-insurer in lieu of submitting proof of insurance;
- (ii) Employer's liability insurance in an amount not less than \$2,000,000.00 for each accident;
- (iii) Commercial general liability insurance with limits of not less than \$2,000,000.00 for each occurrence and aggregate;
- (iv) Commercial automobile liability insurance with a limit for bodily injury and property damage of not less than \$2,000,000.00 each accident;

Exhibit A, Page 4 of 11

(v) Seller shall obtain waivers of subrogation on all their insurance, whether required by this Contract or in excess of the Contract requirements. Such waivers shall be for the benefit of Buyer.

2) **WEIGHING**

All Deliveries: For all non-PRB transactions, Buyer shall determine the weight of the coal delivered hereunder at its expense using its rail, truck, or belt scales, as applicable. For all PRB transactions, Seller shall determine the weight of the coal delivered hereunder at its expense using its rail scales or batch weighing system, as applicable. The party responsible for weighing is hereafter referred to as the weighing party and the other as the non-weighing party.

(A) The accuracy of the weighing party's rail scale(s), truck scale(s), or batch weighing system, as applicable, shall be maintained to within plus or minus two tenths of one percent ($\pm 0.20\%$). The weighing party's rail scale(s), truck scale(s), or batch weighing system, as applicable, shall be calibrated at least once every six months in accordance with the guidelines established by NIST. The calibration shall be performed by a qualified third party (e.g., the rail carrier), using such equipment as deemed appropriate by such third party. At the non-weighing party's request, which may be made from time to time, the weighing party shall inform the non-weighing party of the results of such testing and calibration. It shall be the responsibility of the weighing party to arrange and schedule scale calibrations when required.

(B) The accuracy of the weighing party's belt scales shall be maintained to within plus or minus one half of one percent ($\pm 0.50\%$) accuracy. The weighing party's belt scales shall be tested and calibrated at least once each month in accordance with the guidelines outlined by NIST or other procedures which shall be mutually acceptable to Seller and Buyer. At the non-weighing party's request, which may be made from time to time, the weighing party shall inform the non-weighing party of the results of such testing and calibration. It shall be the responsibility of the weighing party to arrange and schedule scale calibrations when required.

(C) If the weighing party's scales are discovered to be outside of acceptable tolerance ranges ($\pm 0.20\%$ for rail scale(s), truck scales, or batch weighing system, and $\pm 0.50\%$ for conveyor belt scales), then an appropriate adjustment will be made to the tonnage and invoiced retroactively to the date of the most recent calibration or 30 calendar days prior to the calibration which was found in error, whichever is later.

Barge Draft Surveys: If there is no certified belt scale system at the Delivery Point, and if the parties specifically agree that weights shall be determined hereunder by draft survey taken at the Delivery Point, then all such draft surveys shall be conducted by an independent surveyor (certified commercial marine surveyor for vessels) experienced in the conduct of draft surveys selected by mutual agreement of the parties. In cases where (i) there is no certified belt scale system at the Delivery Point or in absence of a certified belt scale system and a draft survey is not taken at the Delivery Point or (ii) the Delivery Point is the ultimate destination, weights shall be determined at the destination by Buyer.

Weights determined in accordance with this Section 2 shall be deemed accepted as correct (absent manifest error) and shall govern all invoicing and payments hereunder. Unless otherwise specified, the costs of weighing shall be for the account of the weighing party.

Irrespective of which party's weights govern for payment hereunder, Seller shall properly weigh each shipment hereunder and report such weights to Buyer within 24 hours after the coal has been loaded for shipment. Seller's weights shall be reported to the recipients designated by and in the manner specified by Buyer.

3) **SAMPLING AND ANALYSIS**

Buyer shall perform all sampling and analysis of coal for non-PRB transactions unless otherwise agreed by the parties. Seller shall perform all sampling and analysis of coal for PRB transactions. The party responsible for sampling and analysis of coal is hereafter referred to as the sampling party and the other as the non-sampling party.

(A) Notwithstanding the foregoing, Seller shall sample the coal or shall provide for the coal to be sampled as it is loaded, analyze the sample(s) so obtained, and notify Buyer and the consigned destination of the short proximate (calorific value per pound, percent moisture, percent ash, percent sulfur, and with respect to PRB coal, percent sodium oxide) average analytical results of each Shipment. Seller's notification shall include its weight determination and the identifying number(s) of each Shipment, and shall be provided within 24 hours after the coal

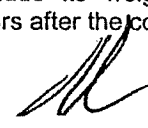
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Exhibit A, Page 5 of 11

is loaded for shipment, or within 36 hours should the Shipment be loaded on a Saturday. Seller's analysis shall be reported to the recipients designated by and in the manner specified by Buyer. Seller shall immediately notify Buyer if either its sampling system or its independent commercial laboratory becomes unavailable or unable, for any reason, to provide the short proximate analysis. Upon such occurrence(s), Buyer and Seller shall establish procedures for sampling and/or analyzing the coal shipped hereunder during such time that Seller's sampling system and/or its independent commercial laboratory are unable to provide the short proximate analysis for such coal. Such short proximate analysis shall not be used for payment purposes hereunder.

(B) All sampling and analysis performed hereunder shall be performed by the sampling party at its expense and shall comply with the governing ASTM procedures and specifications in effect at the time of such sampling and analysis. Coal hereunder shall be sampled during the loading/unloading process by the sampling party, prior to its commingling with other coals. The coal samples shall then be prepared and analyzed in Buyer's laboratory, or, if Seller is the sampling party, by an independent commercial laboratory. The non-sampling party may observe the unloading, sampling, sample preparation and analysis hereunder. Each coal sample collected by the sampling party shall be properly divided into at least two subsamples. One subsample shall be analyzed by the applicable laboratory for the governing contractual analysis. The remaining sample is to be sealed in an airtight container and sent to the non-sampling party at the non-sampling party's request provided such request is made in writing within 30 days after the date of such sampling. In the event that the non-sampling party does not so request, the sampling party shall retain the sample for no less than 30 days.

(C) If Seller's analysis is used for payment purposes hereunder, all sampling shall be performed using a mechanical sample system that has been certified within the previous 24 calendar months by an independent commercial laboratory mutually acceptable to the parties to be free of bias and that is properly operated and maintained. In case of disagreement as to the results of the analysis reported by the Seller, Buyer may request analysis of Buyer's sample by an independent referee laboratory mutually selected by the parties and the final governing analysis shall be the referee analysis. The cost of analyzing Buyer's sample shall be borne by Buyer.

Seller's analysis shall be reported to the recipients designated by and in the manner specified by Buyer. For purposes of determining moisture hereunder, the two-stage procedure as defined in ASTM D3302 shall be used.

Coal received, unloaded, and taken into account that is not sampled or is sampled but not analyzed shall be taken into account as follows: If during any Half-Month period at least fifty percent (by weight) of coal delivered at a respective consigned destination during such period has been sampled and analyzed, then the weighted average analytical results of such samples shall be applicable to all coal delivered to such consigned destination during such Half-Month period. If more than 50% (by weight) of coal delivered at a consigned destination during any such Half-Month period has not been sampled and analyzed, then the weighted average analytical results of the portion of sampled and analyzed coal shall apply to such portion, and the weighted average analytical result of the last preceding Half-Month in which at least 50% (by weight) of the coal delivered to such consigned destination was sampled and analyzed shall be applicable to such portion of the coal delivered which was not sampled and/or was not analyzed for such Half-Month period.

4) **QUALITY ADJUSTMENTS**

If coal delivered under this Contract varies from the Quality specifications in the Contract (the "Specifications"), but Buyer does not exercise its rejection rights under Section 5(A) below, quality adjustments shall be calculated pursuant to the formulas set forth in this Section 4. Within ten days after the end of each Half-Month during the Term, the quality adjustments, if any, shall be netted against each other and the net quality adjustment, as appropriate, for all Shipments of coal during such Half-Month shall be determined by Buyer, 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 Section 6.

(A) If the weighted average calorific value of the coal unloaded and taken into account hereunder in a Half-Month is not equal to the Contracted Half-Month Weighted Average Btu/lb., then there shall be an amount added to the Contract Price (if the calculated number is positive) or subtracted from the Contract Price (if such number is negative), as determined by the following formula, to arrive at the adjusted price for such coal:

$$\text{Amount Per Ton of Increase or} = \frac{(\text{Actual Btu} - \text{Contracted Btu}) \times \text{Contract Price}}{\text{Decrease for Calorific Value} \quad \text{Contracted Btu}}$$



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provided, however, no premium will be paid for Calorific Value which exceeds the Contracted Half-Month Weighted Average Btu/lb. by 300 Btu per pound.

(B) If the weighted average SO₂ content of the coal unloaded and taken into account hereunder in a Half-Month is tested to have an SO₂ content greater than the SO₂ Contracted Half-Month Weighted Average Specification, the Contract Price for such coal will be reduced by an amount per ton determined in accordance with the following formula:

$$\frac{((SO_2 \text{ Contracted} - \text{Actual lbs. } SO_2/\text{mmbtu}) * \text{Actual Btu/lb.} * E)}{1,000,000}$$

E = the SO₂ Monthly Price (or if not published, the average of the SO₂ Daily Prices for the applicable calendar month of delivery) of allowances expressed in dollars per ton of SO₂ in the table entitled "AIR Daily Emission Allowance Indices" published in AIR Daily, or its successor publication, for such calendar month of delivery as first published following such month.

Additionally, an amount of three dollars (\$3.00) per ton shall be deducted from the Contract Price for each Shipment of coal having an SO₂ value greater than the Shipment Suspension Limit.

(C) For each Shipment of coal tested to have an ash content greater than the Contracted Half-Month Weighted Average Specification, the Contract Price for coal in such Shipment will be decreased by \$0.15 for each 0.5% ash increment, or portion thereof, by which the Shipment's ash content is tested to be above the Contracted Half-Month Weighted Average Specification. (For example, if the Contracted Half-Month Weighted Average is 13.00% and a Shipment has a percent ash value of 13.70, then the Contract Price decrease shall be \$0.30 per ton.)

5) **REJECTION AND SUSPENSION RIGHTS**

(A) If any Shipment of coal fails to conform to any requirement specified in the Contract (a "Non-Conforming Shipment"), Buyer shall have the option, exercisable by notice to Seller of either (i) rejecting such Non-Conforming Shipment at the Delivery Point or en route, but prior to unloading from Transporter's equipment or (ii) accepting any Non-Conforming Shipment with a Contract Price adjustment agreed to between Seller and Buyer. Should Buyer exercise such right of rejection, it shall notify Seller by E-mail or verbally upon discovery of the nonconformance, any verbal notification to be promptly confirmed in writing. If Buyer fails to exercise its rejection rights hereunder as to a Non-Conforming Shipment, Buyer shall be deemed to have waived such rights with respect to that Non-Conforming Shipment only. If Buyer 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, replace the rejected coal as soon as possible, provided that Buyer gives written notice to Seller of Buyer's desire for replacement coal within 30 days after rejection of the Non-Conforming Shipment.

(B) If there are three Non-Conforming Shipments, whether rejected or not, under this Contract in any three-month period or if two out of four consecutive Shipments under this Contract are Non-Conforming Shipments, then Buyer may upon notice to Seller suspend the receipt of future Shipments (except Shipments already loaded or in transit to Buyer) under this Contract. A waiver by Buyer of the suspension right for any one period shall not constitute a waiver for subsequent periods. If Seller, within ten days of its receipt of such notice, provides reasonable assurances in writing to Buyer that future Shipments under this Contract will conform to the Specifications and Buyer has accepted such assurances (such acceptance not to be unreasonably withheld, Shipments shall resume and any tonnage deficiencies shall be made up within the Term at Buyer's option. If (i) Seller fails to provide such acceptable assurances within such ten day period, or (ii) after such assurances are provided and for a period of three months thereafter, any Shipment of coal fails to meet any of Buyer's rejection rights under this Section for the Rejection Limit parameter for which there was a prior suspension under this Contract, then such event shall constitute an Event of Default as provided in Section 11 hereof.

(C) If any of the Half-Month weighted average coal qualities fail to conform to the Half-Month Suspension specifications, then Buyer may suspend the receipt of future Shipments (except Shipments already loaded or in transit to Buyer) under this Contract. A waiver by Buyer of the suspension right for any one period shall not constitute a waiver for subsequent periods. If Seller, within ten days of its receipt of such notice, provides reasonable assurances in writing to Buyer that future Shipments under this Contract will conform to the

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Specifications and Buyer has accepted such assurances (such acceptance not to be unreasonably withheld, Shipments shall resume and any tonnage deficiencies shall be made up within the Term at Buyer's option. If (i) Seller fails to provide such acceptable assurances within such ten day period, or (ii) after such assurances are provided and for a period of six months thereafter, any Shipment of coal fails to meet any of the Suspension limits under this Section for any of the Half-Month Suspension limits for which there was a prior suspension under this Contract, then such event shall constitute an Event of Default as provided in Section 11 hereof.

(D) Buyer may terminate this Contract or terminate deliveries from the Source if Buyer in its reasonable judgment determines through operating experience that the coal therefrom causes unsatisfactory performance at the Plant of consignment, even if such coal meets the requirements and specifications of this Contract. In such event, Buyer shall provide Seller with written notice thereof, specifying the basis of such unsatisfactory performance.

6) **PAYMENT**

Buyer shall submit to Seller the weighted average analytical and pricing data for all coal unloaded from the first through the fifteenth calendar day of each month, and from the sixteenth through the last calendar day of each month, within five working days after each such period. Thereafter, Seller shall submit to Buyer, within two working days of receipt of such information, an invoice (referenced by the Contract Number and the applicable transport vehicle numbers), covering such Half-Month unloadings. Buyer will pay to Seller the invoice amount on or before the 20th calendar day following the Half-Month period, provided Seller's invoice is submitted in compliance with the preceding two sentences. Payment shall be made by wire transfer or electronic means in immediately available United States funds for all coal received, unloaded, taken into account, and accepted hereunder. Seller shall provide Buyer all pertinent remittance instructions on each invoice. Overdue payments shall accrue interest (the prime rate of interest for United States Dollars 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.

If any party in good faith reasonably disputes an invoice, it shall provide a written explanation specifying in detail the basis for the dispute and pay any undisputed portion no later than the due date. Upon resolution of any dispute involving an invoice, any additional amount owing shall be paid with interest at the Interest Rate. If any party fails to pay amounts under this Contract when due, unless such amount is the subject of a dispute as provided above, or is excused by Force Majeure, in addition to the rights and remedies provided in this Contract, the aggrieved party shall have the right to suspend performance under this Contract until such amounts plus interest have been paid, and/or exercise any remedy available at law or in equity to enforce payment of such amount plus interest at the Interest Rate defined herein.

If applicable, Seller shall include on its invoice the statement "Seller certifies that (insert number) of tons were mined in Virginia," such statement to be separately signed by Seller.

7) **ASSIGNMENT/DELEGATION**

This Contract shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. However, no party shall assign this Contract or any of its rights or obligations hereunder without the prior written consent of the other party. Notwithstanding the foregoing, any party may, without the need for consent from the other party (and without relieving itself from liability hereunder), (a) transfer, sell, pledge, encumber or assign this Contract or the accounts, revenues or proceeds hereof or thereof in connection with any financing or other financial arrangements or (b) transfer or assign this Contract to an Affiliate of such party; *provided, however*, that no such assignment shall in any way relieve the assignor from liability for full performance under this Contract. Any such assignee shall assume and agree to be bound by the terms and conditions of this Contract.

If AEP or one of its Affiliates is the Buyer under this Contract, it shall have the right to assign this Contract, in whole or in part, to a producer of synthetic fuel (as defined in Section 29 of the Internal Revenue Code of 1986, as amended, hereafter referred to as "Synthetic Fuel"). Should such assignment occur, Seller also agrees upon the request of AEP or its Affiliate to enter into a new agreement with such Synthetic Fuel producer on substantially the same terms and conditions as provided in this Contract with respect to all or part of the coal to be purchased hereunder. In such event, AEP or its Affiliate shall be excused from its obligations under this Contract to purchase coal hereunder to the extent of the quantities provided for in such new agreement.

Written consent to one or more assignments shall not be construed as waiving the necessity of obtaining written consent to other and/or additional assignments.



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8) **FORCE MAJEURE**

To the extent either party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Contract and such party (the "Claiming Party") gives notice and details, orally and confirmed promptly in writing, of the Force Majeure to the other party as soon as practicable (but in no event later than 30 days after the occurrence thereof), then the Claiming Party shall be excused from the performance of its obligations. The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party that are excused by Force Majeure. Failure to give such notice and furnish such information within the time specified shall be deemed a waiver of all rights under this Article for such period of time during which notice was not given. Buyer and Seller shall exercise reasonable efforts to mitigate or eliminate the conditions which have caused the Force Majeure condition, provided, however, nothing herein contained shall be construed as requiring Seller or Buyer to accede to any demands of labor, or labor unions, or suppliers, or other parties which Seller or Buyer considers unacceptable. The Claiming Party claiming Force Majeure shall furnish the non-Claiming Party a monthly statement by the 15th day of the calendar month setting forth the amount of tonnage not shipped or to be reduced because of Force Majeure causes asserted during the second preceding calendar month.

Except as set forth in this paragraph, no suspension or reduction by reasons of Force Majeure shall invalidate the remainder of this Contract but, on the removal of the cause, shipments shall resume at the specified rate. If an event of Force Majeure persists for (i) a continuous period of 60 days or (ii) an aggregate of 75 days in any twelve month period or during the Term of this Contract (if the Term is less than twelve months), then, at any time thereafter during the Force Majeure period, the non-Claiming Party shall have the option, upon three days' prior written notice, to terminate this Contract and the obligations of the parties thereunder.

In the event of a Force Majeure, delivery of the affected quantity of coal shall not be made up except at Buyer's sole discretion.

If Seller claims Force Majeure under this Contract and has obligations to provide coal of a similar type and quality as the coal under other coal sales agreements, or if Buyer claims Force Majeure and has obligations to purchase coal of a similar type and quality as the coal under other coal sales agreements, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated by the party claiming Force Majeure on a pro rata basis among this Contract and such other coal purchase or sales agreements involving coal of a similar type and quality as the coal, to the extent contractually permitted by such agreements. Without limiting the generality of this Article, in the event of a Force Majeure event which causes a partial or total curtailment of electrical generation from or electrical generating capacity at the consigned destination or partial or total curtailment of transmission or distribution of electricity therefrom, Buyer shall at its option, be relieved under this Article from its obligation to accept up to the pro rata (based on such partial curtailment) quantity or entire (based on such total curtailment) quantity of Seller's coal scheduled for delivery for the period during which such event or occurrence exists or existed.

9) **WAIVER**

The failure of Buyer or Seller to insist in any one or more instances upon strict performance of any of the provisions of this Contract or to take advantage of any of its rights hereunder shall not be construed as a future waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect for the term of this Contract.

10) **FINANCIAL RESPONSIBILITY**

Either party shall have the right, but not the obligation, to request from the other party or its guarantor, as applicable, annual financial statements and quarterly financial statements.

11) **EVENT OF DEFAULT AND DAMAGES**

If an Event of Default (as hereafter defined) occurs with respect to a party or its guarantor (the "Defaulting Party") at any time during the term of this Contract, the other party (the "Non-Defaulting Party") may, in its sole discretion, do any or all of the following: (i) establish a date (which date shall be no earlier than the date that such notice is given to the Defaulting Party and no later than 20 days from notice) ("Early Termination Date") on which this Contract shall terminate, (ii) withhold any payments due in respect of this Contract, (iii) suspend performance under this Contract and/or (iv) exercise such other remedies as may be provided in this Contract. An event of default with respect to any party ("Event of Default") shall mean any of the following: (i) the failure of either party or its guarantor to make when due, any payment required hereunder if such failure is not remedied within five Business Days after

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notice of such failure is given to the Defaulting Party by the Non-Defaulting Party; (ii) the failure of either party or its guarantor to comply with any or all of its other respective obligations in good faith as herein set forth and such noncompliance is not cured within twenty Business Days after notice thereof to defaulting party (or if cure is not possible within such period, good faith efforts to effect cure have been undertaken and continued, but such noncompliance is not cured within forty-five calendar days after the date of the notice of noncompliance); or (iii) failure of either party to provide adequate assurances of due performance satisfactory to the Non-Defaulting Party of its ability to perform its further obligations under this Contract within five Business Days of a reasonable written request by the Non-Defaulting Party; (iv) either party (a) filing a petition in bankruptcy, (b) having such a petition filed against it, (c) becoming otherwise insolvent or unable to pay its debts as they become due; (v) the failure of a party's guarantor, if any, to perform any covenant set forth in its guaranty, or such guaranty shall expire or be terminated or shall cease to guarantee the obligations of such party hereunder, or such guarantor shall become subject to any of the events specified in (iv) (a), (b) or (c); or (vi) an event described in the last sentence of Section 5(B) shall have occurred. If this Contract terminates on an Early Termination Date, the Non-Defaulting Party shall calculate, in a good faith commercially reasonable manner, the Settlement Amount as of the Early Termination Date as soon as is reasonably practicable and shall promptly notify the Defaulting Party of the amount thereof.

"Settlement Amount" shall mean the present value of the single net aggregate amount for the remaining term of the Contract, including any exercised option period, of any Losses or Gains, expressed in United States dollars, which the Non-Defaulting Party incurs as a result of the early termination of this Contract in accordance with this Section 11, based upon the then current replacement value of this Contract, the amounts of any unpaid invoices, and the amount for coal delivered but not yet billed. In calculating the Settlement Amount, the Non-Defaulting Party shall set off all amounts that are due to the Defaulting Party against such Settlement Amount so that the Settlement Amount shall be netted to a single liquidated amount. Any collateral being held by the Non-Defaulting Party shall be setoff against the amount owed to the Non-Defaulting Party. If the Defaulting Party is holding collateral posted by the Non-Defaulting Party, then the Non-Defaulting Party will have the right to set off that amount against any payment to be made to the Defaulting Party.

The Non-Defaulting Party shall provide the Defaulting Party with an explanation of how it calculated the Settlement Amount, as well as supporting calculations and documentation reasonably requested by the Defaulting Party. The Non-Defaulting Party shall use good faith commercially reasonable efforts to mitigate any Losses it is entitled to hereunder. The Defaulting Party shall have the right to audit (through a third party independent auditor mutually agreed to by the parties) the calculation of all of the Non-Defaulting Party's Gains and Losses.

If the present value of the Non-Defaulting Party's aggregate Losses (net of any amounts due to the Defaulting Party) exceed the present value of its aggregate Gains, all as finally determined in accordance with the preceding provisions of this section, the Defaulting Party shall, within fifteen Business Days of such final determination, pay the Settlement Amount to the Non-Defaulting Party, including interest thereon at the Interest Rate from the Early Termination Date until paid in full. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Settlement Amount, the Defaulting Party will provide its calculations to the Non-Defaulting Party within fifteen Business Days of receipt of calculation from the Non-Defaulting Party. The Defaulting Party shall nevertheless pay to the Non-Defaulting Party the undisputed portion of the Settlement Amount.

Notwithstanding any provision to the contrary contained in this Contract, the Non-Defaulting Party shall not be required to pay the Defaulting Party any amount under this Section 11, until the Non-Defaulting Party receives confirmation satisfactory to it, in its reasonable discretion (which may include an opinion of its counsel), that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Contract (or otherwise) have been fully and finally performed.

12) FORWARD CONTRACT

Buyer and Seller each acknowledge that it is a "forward contract merchant" and that this Contract constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

13) NETTING AND SETOFF

If Buyer and Seller are required to pay any amount on the same day or in the same month, 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 shall pay to the party owed 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

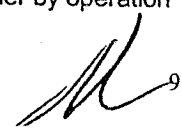


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of law or otherwise). The obligations to make payments under this Contract and/or any other contract between the parties hereto may be offset against each other, set off or recouped therefrom.

14) CONFIDENTIALITY

The parties and their respective affiliates shall keep confidential any and all matters relating to this Contract, except those readily obtainable from public information, requested by a regulatory commission, or otherwise required by law to be disclosed.

15) ENTIRE AGREEMENT; MODIFICATION

This Contract, together with any attachments or exhibits specifically referenced herein, constitutes the entire contract between the Seller and the Buyer with respect to the subject matter hereof, supersedes all prior oral or written representations and contracts, and may be modified only by a written amendment signed by Buyer and Seller.

16) COMPLIANCE WITH LAW

Seller and Buyer shall make good faith efforts to comply with the provisions of all applicable federal, state, and other governmental laws and any applicable order and/or regulations, or any amendments or supplements thereto, which have been, or may at any time be, issued by a governmental agency.

17) GOVERNING LAW; WAIVER OF JURY TRIAL; UCC; VENUE, GOVERNMENT CONTRACTOR COMPLIANCE

This Contract shall be construed, enforced, and performed in accordance with the laws of the Commonwealth of Kentucky without regard to its conflicts of law rules. Each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Contract. Except as otherwise provided for herein, the provisions of the Uniform Commercial Code ("UCC") of the Commonwealth of Kentucky shall govern this Contract and coal provided hereunder shall be deemed to be "goods" for purposes of the UCC. Each party hereby submits to the exclusive jurisdiction of state or federal courts located in Franklin County, Kentucky, and all appellate courts therefrom and waives any objection which it may have at any time to the laying of venue of any proceedings brought in such court, waives any claim that such proceedings have been brought in an inconvenient forum, and further waives the right to object, with respect to such proceedings, that such court does not have jurisdiction over such party.

Unless exempted, Seller shall comply with the equal employment opportunity clause in Section 202 of Executive Order 11246 and all applicable rules, regulations, and relevant orders pertaining to Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and Section 4212 of the Vietnam Era Readjustment Assistance Act of 1974, as amended.

18) NOTICES

Notices provided for or required under this Contract may be exercised verbally, but shall be confirmed in writing as soon as practicable. The parties shall be legally bound from the date the notification is exercised in writing (including by electronic mail). Notices provided for or required in writing herein shall be delivered by hand or electronic means or transmitted by facsimile or sent by certified mail, postage prepaid, return receipt requested, or by overnight mail or courier.

Notices hand delivered or delivered by electronic means, shall be deemed delivered by the close of the Business Day on which it was hand delivered or delivered by electronic means (unless hand delivered or transmitted by electronic means after the close of the Business Day in which case it shall be deemed received by the close of the next Business Day). Notices provided by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of a successful transmission. If the day on which such facsimile is received is not a Business Day or is after five p.m. Eastern Prevailing Time on a Business Day, then such facsimile shall be deemed to have been received on the following Business Day. Notices provided by certified mail, postage prepaid, return receipt requested, or by overnight mail or courier, shall be deemed delivered upon mailing.

19) DEFINITIONS

The following definitions and any terms defined internally in this Contract shall apply to this Contract and all notices and communications made pursuant to this Contract.

"AEP" means American Electric Power Service Corporation, as agent.

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"Affiliate" means with respect to any entity, any other entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such entity. 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.

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

"Business Day" means any day on which Federal Reserve member banks in New York City, New York are open for business, and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

"Contract Price" means the price in United States dollars per ton (unless otherwise specified in the Contract) to be paid by Buyer to Seller for purchase of coal and any other proper charges pursuant to this Contract.

"Eastern Prevailing Time" means Eastern Standard Time or Eastern Daylight Savings Time in effect in New York City, New York, as the case may be on the relevant date.

"Force Majeure" means an event or circumstance which prevents (in whole or in part) one party (the "Claiming Party") from performing its obligations under this Contract, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided, or, if the Claiming Party is Seller, which Seller is unable in good faith to obtain a substitute acceptable to Buyer therefor. Force Majeure includes, but is not limited to, an event or occurrence beyond the control of Buyer, such as without limitation, acts of God, war, insurrection, riots, nuclear disaster, strikes, labor disputes, threats of violence, labor and material shortages, fires, explosions, floods, river freeze-ups, breakdowns or damage to mines, plants, equipment, or facilities (including a forced outage or an extension of a scheduled outage of equipment or facilities to make repairs to avoid breakdowns thereof or damage thereto), interruptions to or slowdowns in transportation, railcar shortages, barge shortages, embargoes, orders, or acts of civil or military authority, laws, regulations, or administrative rulings, or total or partial interruptions of Buyer's operations which are due to any enforcement action or other administrative or judicial action arising from an environmental law or regulation. Force Majeure shall not be based on: (1) Buyer's inability economically to use or resell the coal purchased hereunder; (2) adverse geological or mining conditions; (3) the Seller's ability to sell the coal at a price greater than the Contract Price; or (4) Seller's inability to economically produce or obtain the coal.

"Gains" means, with respect to a party, an amount equal to the present value of the economic benefit, if any, to it resulting from the termination of its obligations with respect to this Contract, determined in a commercially reasonable manner.

"Half-Month" means the first 15 days of a calendar month or the 16th through the last calendar day of a calendar month, as applicable.

"Letters of Credit" means one or more irrevocable, transferable, standby letter of credit, issued by a major United States commercial bank or the United States branch office of a foreign bank, reasonably acceptable to the beneficiary with, in either case, a senior unsecured credit rating of at least (a) "A-" by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. ("S&P"), and "A3" by Moody's Investors Service, Inc. ("Moody's"), if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's, but not both.

"Losses" means, with respect to a party, an amount equal to the present value of the economic loss, if any, to it resulting from the termination of its obligations with respect to this Contract, determined in a commercially reasonable manner, but do not include incidental or consequential damages.

"NIST" means the National Institute of Standards and Technology Handbook #44.

"PRB" means the Powder River Basin located in the States of Montana and Wyoming.

"Performance Assurance" means collateral in the form of either cash or Letters of Credit or such other security of the type and amount requested by the party demanding Performance Assurance.

"Shipment" means, as applicable, one unit trainload or at Buyer's election a composite of two or more unit trainloads, the aggregate of single railcars loaded on any one day (only where single car rates apply), one barge or at Buyer's election a composite of two or more barges, one vessel load, or the aggregate of the truckloads that are loaded on any one day in accordance with the applicable transportation specifications.

"Transporter" means the entity or entities 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.

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KPSC Case No. 2004-00463 – March 17th 2005 Hearing Data Request – Item No. 4 – Supplemental Response B
 PEVLER COAL SALES COMPANY, INC., BEECHFORK PROCESSING INC., AND CZAR COAL CORPORATION / 03-30-99-903

	FORMER CONTRACT	AMENDED AND RESTATED CSA (2005-1)
DATE	2/1/99	3/24/2005
PARTIES	Kentucky Power Company Pelver Coal Sales Company, Inc., Beechfork Processing, Inc., and Czar Coal Corporation	Kentucky Power Company Argus Energy, LLC
MINE/SEAM/COUNTY/ STATE	Longfork No. 4 and No. 5, Eagle No. 10, No. 11, No. 12 and No. 13, Cougar No. 9 and No. 10 in the Haddix seams of Martin and Johnson counties, KY	Kiah Creek Mine, Wayne & Mingo Counties, WV
METHOD	Underground	Surface
TERM	3/1/1999 - 12/31/2005	1/1/2005 – 12/31/2006
EXTENSION RIGHTS	Buyer's right to extend for up to 36 months; with second add'l extension term up to 36 months	N/A
QUANTITY	3/1/99 – term: 40,000 tpm ± 8,000 tpm	600,000 tons at 25,000 tpm
BASE PRICE	F.O.B. Barge Big Sandy River 3/1/99 - 9/30/99 \$26.95 fixed 10/1/99 - 12/31/99 \$28.55 fixed 1/1/00 - 12/31/00 \$29.10 fixed 1/101 - 12/31/01 \$29.55 fixed 1/1/02 - 12/31/02 \$30.00 fixed Eff. 1/1/03 B.P. plus escalation	F.O.B. Plant Truck 2005 \$56.00 fixed 2006 \$49.00 fixed
DELIVERY	F.O.B. Plant May be changed to F.O.B. barge with 40 days written notice prior to first day of month.	F.O.B. Plant May be changed to F.O.B. barge with 20 days notice prior to first day of month election would take place.
PLANT	Big Sandy	Big Sandy
SPECS	Spec. "A" (Contracted Half-Mo. Wtd. Ave.) Btu 12,500 Moisture ≤ 8.0% Ash ≤ 10.0% SO ₂ /MBtu ≤ 1.50	Spec. "B" (Contracted Half-Mo. Wtd. Ave.) Btu 12,000 Moisture ≤ 8.5% Ash ≤ 11.5% SO ₂ /MBtu ≤ 2.50

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PEVLER COAL SALES COMPANY, INC., BEECHFORK PROCESSING INC., AND CZAR COAL CORPORATION / 03-30-99-903

<p>SUSPENSION LIMITS</p>	<p>Spec. "A" (Half-Mo. wtd. ave.) Btu 12,500 min. Moisture 9.0 max. Ash 10.0 max. SO₂ 1.8 max.</p>	<p>(Applic. Lot wtd. ave.) Btu 12,000 min. Moisture 11.5 max. Ash 12.0 max. SO₂ 1.8 max.</p>	<p>(Half-Mo. wtd. ave.) Btu 11,900 min. Moisture 9.0 max. Ash 13.5 max. Sulfur 1.0 max.</p> <p>(Applic. Lot wtd. ave.) Btu 11,800 min. Moisture 10.0 max. Ash 13.5 max. Sulfur 1.05 max.</p>
<p>BTU ADJ.</p>	<p>Spec. "B" (Half-Mo. wtd. ave.) Btu 12,000 min. Moisture 8.5 max. Ash 11.5 max. SO₂ 3.2 max.</p>	<p>(Applic. Lot wtd. ave.) Btu 11,700 min. Moisture 9.5 max. Ash 13.0 max. SO₂ 3.2 max.</p>	<p>(Act. Btu - Contracted Btu) X Contract Price (C.P.) Contracted Btu No premium paid for Btu above - guaranteed Btu by 500 Btu per pound.</p>
<p>SO₂ ADJ.</p>	<p>Spec. "A" (Act. Btu - 12,500 Btu) X B.P. 12,500 Btu No premium paid for Btu above - guaranteed Btu by 500 Btu per pound.</p>	<p>Spec. "B" (Act. Btu - 12,000 Btu) X B.P. 12,000 Btu No premium paid for Btu above - guaranteed Btu by 500 Btu per pound.</p>	<p>\$3.00/ton for each App. Lot w/SO₂ > max. SO₂</p> <p>Spec. "A" Additional SO₂ Adj.: (Act. #SO₂ - 1.5 lbs. SO₂/MBtu) X 0.150* X B.P. = Amt. per ton of decrease for excess SO₂, penalty *Eff. 1/1/00, 0.25 will be the factor used.</p> <p>Spec. "B" Additional SO₂ Adj.: (Act. #SO₂ - 2.5 lbs. SO₂/MBtu) X 0.150* X B.P. = Amt. per ton of decrease for excess SO₂, penalty</p>

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Y2005 Delivery Forecast Comparison

<u>Pevler Group</u>	Argus Energy 03-30-99-903	Colona Synfuel 03-30-04-018	Colona Synfuel 03-30-04-017	Pevler Total
Tons	300,000	400,000	216,000	916,000
\$/Ton FOB Mine	56.00	33.35	29.47	39.85
\$/Ton Transportation	0	0	0	0
\$/Ton Delivered	56.00	33.35	29.47	39.85
Btu/lb	12,000	12,000	12,000	12,000
Cents/MMBtu	233.33	138.96	122.79	166.05

<u>Non-Pevler Contracts</u>	Eastern Consolidated 03-30-04-900	COALSLES (Peabody) 03-30-05-900	Non-Pevler Total
Tons	290,000	416,000	706,000
\$/Ton FOB Mine	51.00	46.25	48.20
\$/Ton Transportation	0	4.24	2.50
\$/Ton Delivered	51.00	50.49	50.70
Btu/lb	12,000	12,500	12,295
Cents/MMBtu	212.50	201.96	206.19

SOURCE: Extract from Controllers Forecast of the Big Sandy Plant dated March 31, 2005