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December 13, 2006

VIA HAND DELIVERY

RECEIVED

DEC 13 2006

PUBLIC SERVICE
COMMISSION

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

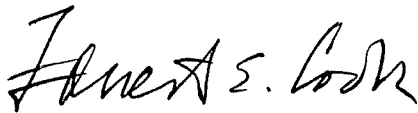
Re: In the Matter of Cumberland Valley Electric, Inc. versus Kentucky Utilities Company, Case No. 2006-00148

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and eight (8) copies of the Response of Black Mountain Resources LLC and Stillhouse Mining LLC to (1) Commission Staff's Second Data Request and (2) Cumberland Valley Electric, Inc.'s Second Request for Information.

This filing is made on behalf of Black Mountain Resources LLC and Stillhouse Mining LLC (granted full intervention status by September 13, 2006, Order of the Commission).

Sincerely,



Forrest E. Cook

FEC/fc

Enclosures

cc: Parties of Record

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:

CUMBERLAND VALLEY ELECTRIC, INC.)

COMPLAINANT)

v.)

KENTUCKY UTILITIES COMPANY)

DEFENDANT)

CASE NO. 2006-00148

**RESPONSE OF
BLACK MOUNTAIN RESOURCES LLC AND
STILLHOUSE MINING LLC
TO THE COMMISSION STAFF'S
SECOND DATA REQUEST
DATED NOVEMBER 29, 2006**

Filed: December 13, 2006

**BLACK MOUNTAIN RESOURCES LLC
AND STILLHOUSE MINING LLC
CASE NO. 2006-00148**

**Response to Commission Staff's
Second Data Request
Dated 11/29/06**

Question No. 1

Witness: Richard Matda

Q-1. Refer to the Direct Testimony of Richard Matda, page 4. Mr. Matda states that Arch Minerals previously conducted underground mining in the immediate vicinity of Stillhouse No. 2.

a. State where each and every portal to the Arch Minerals mine was located.

b. State whether the reserves mined by Arch Minerals were located in the certified service territories of both the Kentucky Utility Company and Cumberland Valley Electric, Inc.

A-1. a. Arch Minerals had four portal sites for the No. 37 mine. The main portals were located at the confluence of Cloverlick Creek and Pounding Mill Branch. These portals were located at N 36° 57' 23" and W 83° 00' 14". This is approximately 10,250 feet east of the Stillhouse No. 2 portals. A set of ventilation portals were located in Perkins Branch at N 36° 57' 33" and W 83° 01' 54" or approximately 2,030 feet east of the Stillhouse No. 2 portals. A second set of ventilation portals were constructed in Lewis Branch at N 36° 57' 31" and W 83° 02' 09" or approximately 830 feet east of the Stillhouse No. 2 portals. The final set of portals were ventilation portals constructed in Tantrough Branch at N 36° 57' 25" and W 85° 02' 58" or approximately 3,138 feet west of the Stillhouse No. 2 portals.

b. Yes.

CERTIFICATE OF SERVICE


I hereby certify that a copy of the foregoing ~~Response~~ was servit-class mail, postage pre-paid, upon the following, December 13, 2006:

Hon. Anthony G. Martin
PO Box 1812
Lexington, KY 40588

Hon. W. Patrick Hauser
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Barboursville, KY 40906

Hon. J. Gregory Cornett
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2000 PNC Plaza
500 West Jefferson Street
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Hon. Allyson K. Sturgeon
Attorney for E.ON U.S. LLC
220 West Main Street
Louisville, KY 40202


Counsel for Black Mountain Reses LLC and
Stillhouse Mining LLC

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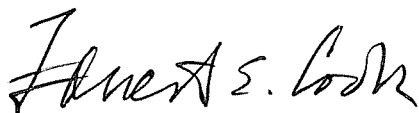
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AND STILLHOUSE MINING LLC
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**Response to Cumberland Valley Electric, Inc.'s
Second Request for Information
Dated 11/29/06**

Question No. 1 (Follow-up to CVE 1st Q-3)

Witness: Richard Matda

Q-1. a. Please explain specifically what costs are allocated and by whom. Does the term "usage" refer to kwh or kw? If not, please identify what usage is used to "allocate the costs"?

b. Are there kwh and demand meters present and in operation at each of the affiliate operations listed in BMR's response to Questions 1 and 5?

c. Are there kwh and demand meters present and in operation at each of the non-affiliate operations listed in BMR's response to Questions 1 and 5?

d. Please affirm that the non-affiliates identified in Response 5 are allocated costs for use of the distribution system in the same manner as are affiliates.

e. With regard to each affiliate and non-affiliate operation what is the form or method of compensation for electric usage for the allocated costs?

A-1. a. Usage does not refer to kwh or kw. For purposes of accounting, the total charges for electricity purchased from KU are allocated between mining operations. The allocation methodology resulted from an informal collaboration between Operations and Accounting. The calculation begins with the category (fans, beltdrives, sectional). The categories, by installed horsepower, are multiplied by utilization factor (E.g., fans operate 100% of the time, the beltdrives do not) and load factor. The product of these calculations is expressed in actual horsepower per mine, which is then expressed in percentage of the total horsepower throughout the distribution system. The percentage of total system horsepower is the percentage of the invoice amount that is allocated to any given mining operation for that month.

b. No.

c. No.

d. It is an internal accounting of direct and indirect costs. The allocation is the same (by methodology) but the costs of non-affiliates are absorbed not passed on.

e. Affiliates are subject to inter-company charges/transfers. Non-affiliated companies are not charged. The allocation for non-affiliates is for accounting purposes, only.

**BLACK MOUNTAIN RESOURCES LLC
AND STILLHOUSE MINING LLC
CASE NO. 2006-00148**

**Response to Cumberland Valley Electric, Inc.'s
Second Request for Information
Dated 11/29/06**

Question No. 2 (Follow-up to CVE 1st Q-5)

Witness: Richard Matda

Q-2. a. Please affirm that Highland Mining, Jarissa, Inc., Parton Brother's Contracting, H&D Mining, Timbertree Mining, Collier's Creek Surface Mine and Timbertree Surface Mine are allocated costs of the RDL distribution system costs. Please explain the basis for the allocation.

b. Please affirm that each of the above are legal entities that have no relationship to BMR and SM, other than an arrangement to mine coal on the U. S. Steel Property.

A-2 a. Denied. Collier's Creek Surface Mine, Timbertree Mining and Timbertree Surface Mine do not utilize or use electricity from K.U. via the BMR/RDL distribution system. The distribution system provides electricity, at no direct cost, to each of the remaining mines (identified in Q-2). The basis for allocation or methodology is as stated in response to Q-1, above.

b. OBJECTION. BMR and SM object to so much of the question as seeks a conclusion of law, i.e., the witness is asked to determine, as a matter of law, whether the name used by each mining operation is also the name of the legal entity owner, a non-party / non-affiliate of the intervening parties.

However, without waiver of and subject to the foregoing objection, the question is answered as follows: The named mining operations have no relationship to BMR and SM, other than an arrangement to mine coal on the U.S. Steel Property. Collier's Creek Surface Mine, Timbertree Mining and Timbertree Surface Mine are believed to be operated by Nally & Hamilton. The remaining mines are believed to bear the names of the company that operates the mine.

**BLACK MOUNTAIN RESOURCES LLC
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CASE NO. 2006-00148**

**Response to Cumberland Valley Electric, Inc.'s
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Dated 11/29/06**

Question No. 3 (Follow-up to CVE 1st Q-9)

Witness: Richard Matda

Q-3. Please affirm or deny that RDL/BMR have mining operations in KU territory outside of the U. S. Steel Property.

A-3. The "U.S. Steel Property," as used in the answer to CVE 1st Q-9, is a generic reference to the properties acquired from "Arch," which, as used by Richard Matda, includes certain property located in Harlan and Letcher Counties, Kentucky, previously controlled by Apogee Coal Company d/b/a Arch of Kentucky or Arch Coal Inc. Although some of the tracts or parcels of property may have been acquired by Arch from grantors other than U.S. Steel, most of the property was previously owned by U.S. Steel. For that reason, the entirety of the Arch properties are typically referred to as a part of the U.S. Steel Property. For that reason, some minor portion of the property could be described as "outside the U.S. Steel Property" and in KU territory.

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Question No. 4 (Follow-up to CVE 1st Q-10)

Witness: Richard Matda

Q-4. Please describe what the green and blue solid lines on the March 2006 Reserve Summary Map represent.

A-4. The green solid lines depict Harlan seam "coal outcrop." (The green area indicates surface mineable reserves in the Harlan seam). The blue solid lines depict the "BMR property line."

**BLACK MOUNTAIN RESOURCES LLC
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**Response to Cumberland Valley Electric, Inc.'s
Second Request for Information
Dated 11/29/06**

Question No. 5 (Follow-up to CVE 1st Q-15)

Witness: Richard Matda

Q-5. Please affirm that BMR, Stillhouse or affiliates have no knowledge that either U.S. Steel or Arch had any plans to open Stillhouse Mine No. 2. If denied, please explain.

A-5. The intervening parties have inadequate information upon which to form a belief regarding whether U.S. Steel or Arch intended to "to open" or "not to open" Stillhouse Mine No. 2. The mining of some coal reserves included in the permit and/or mine license maps for Arch Mine No. 37 may have been deferred due to the economy (market demand or price) or technology at that time.

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**Response to Cumberland Valley Electric, Inc.'s
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Dated 11/29/06**

Question No. 6 (Follow-up to CVE 1st Q-16)

Witness: Richard Matda

Q-6. a. Please affirm that BMR, Stillhouse or affiliates have no knowledge that either U.S. Steel or Arch had any plans to mine the Stillhouse Mine No. 2 permitted reserves. If denied, please explain.

b. Why did Arch close Mine No. 37?

A-6. a. The intervening parties have inadequate information upon which to form a belief regarding whether U.S. Steel or Arch intended to mine or not mine the Stillhouse Mine No. 2 permitted reserves. The mining of some coal reserves included in the permit and/or mine license maps for Arch Mine No. 37 may have been deferred due to the economy (market demand or price) or technology at that time.

b. The intervening parties have inadequate information upon which to form a belief regarding why Arch closed Mine No. 37.

**BLACK MOUNTAIN RESOURCES LLC
AND STILLHOUSE MINING LLC
CASE NO. 2006-00148**

**Response to Cumberland Valley Electric, Inc.'s
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Dated 11/29/06**

Question No. 7 (Follow-up to CVE 1st Q-17)

Witness: Richard Matda

Q-7. a. Please describe the alternatives to the water pump and explain why each of them was not selected over the water pump.

b. Is the water pump within the permit boundary?

c. Why do the Matda Maps exclude the permit boundary immediately to the west of the portal which area would include the water pump?

d. Please affirm that the existing water pump as currently used is an integral part of the Stillhouse Mine No. 2 operation. If denied, please explain.

A-7 a. The choices included use of the water available from the Harlan seam as it is mined (a) without that source being supplemented, (b) with additional water, as needed, from Mine No. 37, (c) with additional water, as needed, from a drilled well, or (d) with additional water, as needed, from the present water pump. Comparative costs did not vary greatly. Management believed the location of the present water pump, all things considered, to be the appropriate decision at the time.

b. Yes.

c. Obviously, Complainant is misreading the Matda Maps. The water pump is not located to the west of the portal.

d. If "integral" is defined as essential – the statement is denied. Stillhouse Mine No. 2 operated from June 2005 to December 2005 prior to the water pump being connected to the mine. The water pump facilitates coal production by supplementing the pre-existing water supply.

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Question No. 8 (Follow-up to CVE 1st Q-19)

Witness: Richard Matda

Q-8. Please affirm that the Stillhouse Mine No. 2 permitted reserves do not include those reserves to be or that were mined by ARCH Mine No. 37 and that the Mine No. 2 permitted reserves are not shown on the Mine No. 37 Final Closure Map. If denied, please explain.

A-8. OBJECTION. Q-8 is a compound question that assumes facts not in evidence. However, without waiver of and subject to the foregoing objections, the purported statement of facts is denied.

The question suggests a misunderstanding on the part of the Complainant. A permit map is different from a mine license map. The permitted reserves for Stillhouse Mine No. 2 include, but are not limited to, reserves shown on the Mine No. 37 Final Closure Map.

**BLACK MOUNTAIN RESOURCES LLC
AND STILLHOUSE MINING LLC
CASE NO. 2006-00148**

**Response to Cumberland Valley Electric, Inc.'s
Second Request for Information
Dated 11/29/06**

Question No. 9 (Follow-up to CVE 1st Q-21)

Witness: Richard Matda

Q-9. Please explain why the permitted reserves and the permitted boundary do not coincide.

A-9. The question suggests a misunderstanding on the part of the Complainant. The permitted reserves are those reserves within the permitted boundary.

**BLACK MOUNTAIN RESOURCES LLC
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**Response to Cumberland Valley Electric, Inc.'s
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Dated 11/29/06**

Question No. 10 (Follow-up to CVE 1st Q-23)

Witness: Richard Matda

Q-10. Please affirm that Stillhouse LLC does not plan to mine the reserves remaining in the closed Arch Mine # 37 as part of Stillhouse Mine No. 2 Mine Plan as submitted to the Kentucky Department of Mines and Minerals Mine License Map. If denied, please explain.

A-10. Denied. The answer speaks clearly to the question. SM does plan to mine the reserves indicated in its current mine plan.

**BLACK MOUNTAIN RESOURCES LLC
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**Response to Cumberland Valley Electric, Inc.'s
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Question No. 11 (Follow-up to CVE 1st Q-26)

Witness: Richard Matda

Q-11. a. Please affirm that LEB-1 does not include all of the RDL/BMR distribution lines.

b. Please affirm that LEB-1 does not include the 69 kv 266.8 ACSR line extending to the east out of the Lynch Station, the 477 ASR de-energized line south of Cloverlick Creek, the 4/0 ACSR line extending south from Cloverlick Mine No. 7, the 4/0 ACSR de-energized line extending south below Cave Spur, and the line extending to Simpson Mine No. 9. If denied, please explain.

A-11. a. LEB-1 appears to include all distribution lines that are energized.

b. The lines identified by "Q-11b" are not depicted on LEB-1. However, these lines are de-energized and, in some instances, some or all of the lines have been removed. For instance, much of "the line extending to Simpson Mine No. 9" has been removed because Simpson Mine No. 9 mine has been closed, the area strip-mined and backfilled to approximate the original contours.

**BLACK MOUNTAIN RESOURCES LLC
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CASE NO. 2006-00148**

**Response to Cumberland Valley Electric, Inc.'s
Second Request for Information
Dated 11/29/06**

Question No. 12 (Follow-up to CVE 1st Q-28)

Witness: Richard Matda

Q-12. Please affirm that by "take" power from KU Mr. Matda means "uses" power from KU. If denied, please explain.

A-12. For purposes of clarification, Mr. Matda means that the eight underground mines and one surface mine located in Harlan County, Kentucky utilize or use electricity from K.U.

**BLACK MOUNTAIN RESOURCES LLC
AND STILLHOUSE MINING LLC
CASE NO. 2006-00148**

**Response to Cumberland Valley Electric, Inc.'s
Second Request for Information
Dated 11/29/06**

Question No. 13 (Follow-up to CVE 1st Q-37 and Q-38)

Witness: Richard Matda

Q-13. a. Please affirm that it is Mr. Matda's testimony that RDL, BMR or any affiliate on their own, by use of a contractor, or any other party have performed no other upgrade, repair or modification in any manner other than right-of-way clearing on the 12 kv line extending from the Cloverlick Station to the terminus of the line to the Arch Mine No. 37 fan since 1998. If denied, please explain.

b. Provide the total cost for all repairs, replacements, upgrades or other work on this line "as it existed when purchased from Arch" to the present time.

c. Provide outage records for any and all of the BMR distribution facilities that are utilized in providing service to Stillhouse Mine No. 2.

A-13. a. Denied. Mr. Matda's testimony is based upon recollection, information and belief as the witness has been unable to locate records that would allow a more particularized response regarding "upgrade, repair or modification in any manner" of the 12 kv line extending from the Cloverlick Station to the terminus of the line to the Arch Mine No. 37 fan. Mr. Matda is not prepared to say there has been no other work. He is, however, aware of some repairs such as re-establishing lines after surface mining resulted in poles and/or lines being moved, replacing insulators damaged by hunters or vandals, and right-of-way clearing.

b. Mr. Matda is unable to provide the requested information. No records were maintained for work on the distribution line, as such.

c. There are no such records (outage records) for the BMR distribution facilities that are utilized in providing service to Stillhouse Mine No. 2.

**BLACK MOUNTAIN RESOURCES LLC
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CASE NO. 2006-00148**

**Response to Cumberland Valley Electric, Inc.'s
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Dated 11/29/06**

Question No. 14 (Follow-up to CVE 1st Q-42)

Witness: Richard Matda

Q-14. Please affirm that the Arch Mine No. 37 fan was removed and the associated portal was sealed in 1998. If denied, please explain.

A-14. Affirmed.

**BLACK MOUNTAIN RESOURCES LLC
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CASE NO. 2006-00148**

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Question No. 15 (Follow-up to CVE 1st Q-48, 49, 50 and 51)

Witness: Richard Matda

- Q-15. a. Please affirm that it is BMR's position that rates, bills, energy consumption and coal production are irrelevant in this proceeding. If denied, please provide the information requested.
- b. Please affirm that it is BMR's position that the energy requirements at Stillhouse Mine No. 2 are irrelevant to this proceeding. If denied, please provide the information requested.
- c. Please affirm that it is BMR's position that the impact of any "rate differential" on BMR is irrelevant to this proceeding. If denied, please provide the information requested.

A-15. a. OBJECTION. It is BMR's position that each of the earlier questions was over broad, unduly burdensome and inconsistent with controlling practice and procedure. Incorporating a reiteration of four overly broad, unduly burdensome questions into a single request simply compounds the problem. The Commission, by Order entered in this case on September 13, 2006, has already said that damages are "not an issue arising under the Act." The material requested is, therefore, not relevant for the purpose of damages.

However, without waiver of and subject to the foregoing objections, interveners answer as follows. Denied. It is not BMR's position that energy consumption, load factors and rate differentials are not relevant. The rate differentials are presumably known by CVE and KU and are not determined by 5 years of records leading up to the opening of Stillhouse Mine No. 2. Likewise, it is not BMR's position that CVE's capability to serve the load is not relevant (which capability to date CVE has been unwilling to address in significant detail in response to KU's data requests). If CVE is unable to serve the load, that is highly relevant. Again, that does not render as relevant a wholesale request for 5 years of records for multiple mining operations prior to the opening of Stillhouse Mine No. 2.

b. OBJECTION. The intervening parties incorporate the objections, stated above at A-15a. However, without waiver of and subject to the foregoing objections, interveners answer as follows. Denied.

c. OBJECTION. The intervening parties incorporate the objections, stated above at A-15a. However, without waiver of and subject to the foregoing objections, interveners answer as follows. Denied.

**BLACK MOUNTAIN RESOURCES LLC
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Question No. 16 (Follow-up to CVE 1st Q-56)

Witness: Richard Matda

Q-16. Please state with particularity and by item any claim of irrelevance made by BMR with respect to every item contained in the Agreed Statement of Facts. Please explain by item what facts BMR disagrees with on a substantive basis and the basis for that disagreement.

A-16. Substantively, BMR has previously noted that the map attached to the Agreed Statement of Facts contains erroneous information, namely the "Benham Municipal Utility" area appears to be in the wrong place.

CERTIFICATE OF SERVICE

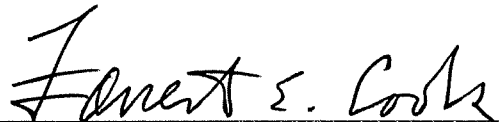
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Hon. Allyson K. Sturgeon
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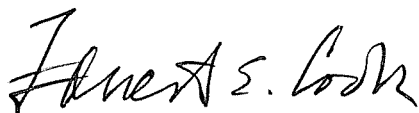
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Witness: Richard Matda

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b. No.

c. No.

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A-2 a. Denied. Collier's Creek Surface Mine, Timbertree Mining and Timbertree Surface Mine do not utilize or use electricity from K.U. via the BMR/RDL distribution system. The distribution system provides electricity, at no direct cost, to each of the remaining mines (identified in Q-2). The basis for allocation or methodology is as stated in response to Q-1, above.

b. OBJECTION. BMR and SM object to so much of the question as seeks a conclusion of law, i.e., the witness is asked to determine, as a matter of law, whether the name used by each mining operation is also the name of the legal entity owner, a non-party / non-affiliate of the intervening parties.

However, without waiver of and subject to the foregoing objection, the question is answered as follows: The named mining operations have no relationship to BMR and SM, other than an arrangement to mine coal on the U.S. Steel Property. Collier's Creek Surface Mine, Timbertree Mining and Timbertree Surface Mine are believed to be operated by Nally & Hamilton. The remaining mines are believed to bear the names of the company that operates the mine.

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Question No. 3 (Follow-up to CVE 1st Q-9)

Witness: Richard Matda

Q-3. Please affirm or deny that RDL/BMR have mining operations in KU territory outside of the U. S. Steel Property.

A-3. The "U.S. Steel Property," as used in the answer to CVE 1st Q-9, is a generic reference to the properties acquired from "Arch," which, as used by Richard Matda, includes certain property located in Harlan and Letcher Counties, Kentucky, previously controlled by Apogee Coal Company d/b/a Arch of Kentucky or Arch Coal Inc. Although some of the tracts or parcels of property may have been acquired by Arch from grantors other than U.S. Steel, most of the property was previously owned by U.S. Steel. For that reason, the entirety of the Arch properties are typically referred to as a part of the U.S. Steel Property. For that reason, some minor portion of the property could be described as "outside the U.S. Steel Property" and in KU territory.

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Question No. 4 (Follow-up to CVE 1st Q-10)

Witness: Richard Matda

Q-4. Please describe what the green and blue solid lines on the March 2006 Reserve Summary Map represent.

A-4. The green solid lines depict Harlan seam "coal outcrop." (The green area indicates surface mineable reserves in the Harlan seam). The blue solid lines depict the "BMR property line."

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Question No. 5 (Follow-up to CVE 1st Q-15)

Witness: Richard Matda

Q-5. Please affirm that BMR, Stillhouse or affiliates have no knowledge that either U.S. Steel or Arch had any plans to open Stillhouse Mine No. 2. If denied, please explain.

A-5. The intervening parties have inadequate information upon which to form a belief regarding whether U.S. Steel or Arch intended to "to open" or "not to open" Stillhouse Mine No. 2. The mining of some coal reserves included in the permit and/or mine license maps for Arch Mine No. 37 may have been deferred due to the economy (market demand or price) or technology at that time.

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Question No. 6 (Follow-up to CVE 1st Q-16)

Witness: Richard Matda

Q-6. a. Please affirm that BMR, Stillhouse or affiliates have no knowledge that either U.S. Steel or Arch had any plans to mine the Stillhouse Mine No. 2 permitted reserves. If denied, please explain.

b. Why did Arch close Mine No. 37?

A-6. a. The intervening parties have inadequate information upon which to form a belief regarding whether U.S. Steel or Arch intended to mine or not mine the Stillhouse Mine No. 2 permitted reserves. The mining of some coal reserves included in the permit and/or mine license maps for Arch Mine No. 37 may have been deferred due to the economy (market demand or price) or technology at that time.

b. The intervening parties have inadequate information upon which to form a belief regarding why Arch closed Mine No. 37.

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Question No. 7 (Follow-up to CVE 1st Q-17)

Witness: Richard Matda

Q-7. a. Please describe the alternatives to the water pump and explain why each of them was not selected over the water pump.

b. Is the water pump within the permit boundary?

c. Why do the Matda Maps exclude the permit boundary immediately to the west of the portal which area would include the water pump?

d. Please affirm that the existing water pump as currently used is an integral part of the Stillhouse Mine No. 2 operation. If denied, please explain.

A-7 a. The choices included use of the water available from the Harlan seam as it is mined (a) without that source being supplemented, (b) with additional water, as needed, from Mine No. 37, (c) with additional water, as needed, from a drilled well, or (d) with additional water, as needed, from the present water pump. Comparative costs did not vary greatly. Management believed the location of the present water pump, all things considered, to be the appropriate decision at the time.

b. Yes.

c. Obviously, Complainant is misreading the Matda Maps. The water pump is not located to the west of the portal.

d. If "integral" is defined as essential – the statement is denied. Stillhouse Mine No. 2 operated from June 2005 to December 2005 prior to the water pump being connected to the mine. The water pump facilitates coal production by supplementing the pre-existing water supply.

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Question No. 8 (Follow-up to CVE 1st Q-19)

Witness: Richard Matda

Q-8. Please affirm that the Stillhouse Mine No. 2 permitted reserves do not include those reserves to be or that were mined by ARCH Mine No. 37 and that the Mine No. 2 permitted reserves are not shown on the Mine No. 37 Final Closure Map. If denied, please explain.

A-8. OBJECTION. Q-8 is a compound question that assumes facts not in evidence. However, without waiver of and subject to the foregoing objections, the purported statement of facts is denied.

The question suggests a misunderstanding on the part of the Complainant. A permit map is different from a mine license map. The permitted reserves for Stillhouse Mine No. 2 include, but are not limited to, reserves shown on the Mine No. 37 Final Closure Map.

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Question No. 9 (Follow-up to CVE 1st Q-21)

Witness: Richard Matda

Q-9. Please explain why the permitted reserves and the permitted boundary do not coincide.

A-9. The question suggests a misunderstanding on the part of the Complainant. The permitted reserves are those reserves within the permitted boundary.

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Question No. 10 (Follow-up to CVE 1st Q-23)

Witness: Richard Matda

Q-10. Please affirm that Stillhouse LLC does not plan to mine the reserves remaining in the closed Arch Mine # 37 as part of Stillhouse Mine No. 2 Mine Plan as submitted to the Kentucky Department of Mines and Minerals Mine License Map. If denied, please explain.

A-10. Denied. The answer speaks clearly to the question. SM does plan to mine the reserves indicated in its current mine plan.

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Question No. 11 (Follow-up to CVE 1st Q-26)

Witness: Richard Matda

Q-11. a. Please affirm that LEB-1 does not include all of the RDL/BMR distribution lines.

b. Please affirm that LEB-1 does not include the 69 kv 266.8 ACSR line extending to the east out of the Lynch Station, the 477 ASR de-energized line south of Cloverlick Creek, the 4/0 ACSR line extending south from Cloverlick Mine No. 7, the 4/0 ACSR de-energized line extending south below Cave Spur, and the line extending to Simpson Mine No. 9. If denied, please explain.

A-11. a. LEB-1 appears to include all distribution lines that are energized.

b. The lines identified by "Q-11b" are not depicted on LEB-1. However, these lines are de-energized and, in some instances, some or all of the lines have been removed. For instance, much of "the line extending to Simpson Mine No. 9" has been removed because Simpson Mine No. 9 mine has been closed, the area strip-mined and backfilled to approximate the original contours.

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Question No. 12 (Follow-up to CVE 1st Q-28)

Witness: Richard Matda

Q-12. Please affirm that by "take" power from KU Mr. Matda means "uses" power from KU. If denied, please explain.

A-12. For purposes of clarification, Mr. Matda means that the eight underground mines and one surface mine located in Harlan County, Kentucky utilize or use electricity from K.U.

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Question No. 13 (Follow-up to CVE 1st Q-37 and Q-38)

Witness: Richard Matda

Q-13. a. Please affirm that it is Mr. Matda's testimony that RDL, BMR or any affiliate on their own, by use of a contractor, or any other party have performed no other upgrade, repair or modification in any manner other than right-of-way clearing on the 12 kv line extending from the Cloverlick Station to the terminus of the line to the Arch Mine No. 37 fan since 1998. If denied, please explain.

b. Provide the total cost for all repairs, replacements, upgrades or other work on this line "as it existed when purchased from Arch" to the present time.

c. Provide outage records for any and all of the BMR distribution facilities that are utilized in providing service to Stillhouse Mine No. 2.

A-13. a. Denied. Mr. Matda's testimony is based upon recollection, information and belief as the witness has been unable to locate records that would allow a more particularized response regarding "upgrade, repair or modification in any manner" of the 12 kv line extending from the Cloverlick Station to the terminus of the line to the Arch Mine No. 37 fan. Mr. Matda is not prepared to say there has been no other work. He is, however, aware of some repairs such as re-establishing lines after surface mining resulted in poles and/or lines being moved, replacing insulators damaged by hunters or vandals, and right-of-way clearing.

b. Mr. Matda is unable to provide the requested information. No records were maintained for work on the distribution line, as such.

c. There are no such records (outage records) for the BMR distribution facilities that are utilized in providing service to Stillhouse Mine No. 2.

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Question No. 14 (Follow-up to CVE 1st Q-42)

Witness: Richard Matda

Q-14. Please affirm that the Arch Mine No. 37 fan was removed and the associated portal was sealed in 1998. If denied, please explain.

A-14. Affirmed.

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Question No. 15 (Follow-up to CVE 1st Q-48, 49, 50 and 51)

Witness: Richard Matda

- Q-15. a. Please affirm that it is BMR's position that rates, bills, energy consumption and coal production are irrelevant in this proceeding. If denied, please provide the information requested.
- b. Please affirm that it is BMR's position that the energy requirements at Stillhouse Mine No. 2 are irrelevant to this proceeding. If denied, please provide the information requested.
- c. Please affirm that it is BMR's position that the impact of any "rate differential" on BMR is irrelevant to this proceeding. If denied, please provide the information requested.

A-15. a. OBJECTION. It is BMR's position that each of the earlier questions was over broad, unduly burdensome and inconsistent with controlling practice and procedure. Incorporating a reiteration of four overly broad, unduly burdensome questions into a single request simply compounds the problem. The Commission, by Order entered in this case on September 13, 2006, has already said that damages are "not an issue arising under the Act." The material requested is, therefore, not relevant for the purpose of damages.

However, without waiver of and subject to the foregoing objections, interveners answer as follows. Denied. It is not BMR's position that energy consumption, load factors and rate differentials are not relevant. The rate differentials are presumably known by CVE and KU and are not determined by 5 years of records leading up to the opening of Stillhouse Mine No. 2. Likewise, it is not BMR's position that CVE's capability to serve the load is not relevant (which capability to date CVE has been unwilling to address in significant detail in response to KU's data requests). If CVE is unable to serve the load, that is highly relevant. Again, that does not render as relevant a wholesale request for 5 years of records for multiple mining operations prior to the opening of Stillhouse Mine No. 2.

b. OBJECTION. The intervening parties incorporate the objections, stated above at A-15a. However, without waiver of and subject to the foregoing objections, interveners answer as follows. Denied.

c. OBJECTION. The intervening parties incorporate the objections, stated above at A-15a. However, without waiver of and subject to the foregoing objections, interveners answer as follows. Denied.

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Question No. 16 (Follow-up to CVE 1st Q-56)

Witness: Richard Matda

Q-16. Please state with particularity and by item any claim of irrelevance made by BMR with respect to every item contained in the Agreed Statement of Facts. Please explain by item what facts BMR disagrees with on a substantive basis and the basis for that disagreement.

A-16. Substantively, BMR has previously noted that the map attached to the Agreed Statement of Facts contains erroneous information, namely the "Benham Municipal Utility" area appears to be in the wrong place.

CERTIFICATE OF SERVICE

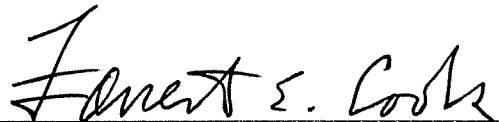
I hereby certify that a copy of the foregoing Response was served by first-class mail, postage pre-paid, upon the following, December 13, 2006:

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