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John J. Finnigan, Jr.  
Associate General Counsel

**VIA OVERNIGHT MAIL**

October 22, 2007

Ms. Elizabeth O'Donnell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40602

**RECEIVED**

OCI 23 2007

**PUBLIC SERVICE  
COMMISSION**

Re: In the Matter of the Application of the Fuel Adjustment Clause of Duke Energy  
Kentucky from January 1, 2007 through April 30, 2007  
Case No. 2007-00280

---

Dear Ms. O'Donnell:

Enclosed is an original and five copies of Duke Energy Kentucky, Inc.'s responses to the Staff's Hearing Data Requests in the above-referenced case.

Please date-stamp and return the two extra copies of the letter in the enclosed envelope.

Thank you.

Sincerely,

John J. Finnigan, Jr.  
Associate General Counsel

JJF/bsc

Enclosures

**KyPSC Staff Hearing Data Requests**  
**Duke Energy Kentucky Case No. 2007-00280**  
**Date Received: October 11, 2007**  
**Response Due Date: October 22, 2007**

**KyPSC-DR-HEARING-001**

**REQUEST:**

Referring to Data Request No. 7 filed on August 24, 2007, please provide a comparison of the price of coal purchases for Miami Fort Unit 6 in relation to those paid by other utilities. Please show the following:

- a. how the prices compare
- b. list of the utilities in the comparison group.

**RECEIVED**

OCI 23 2007

**PUBLIC SERVICE  
COMMISSION**

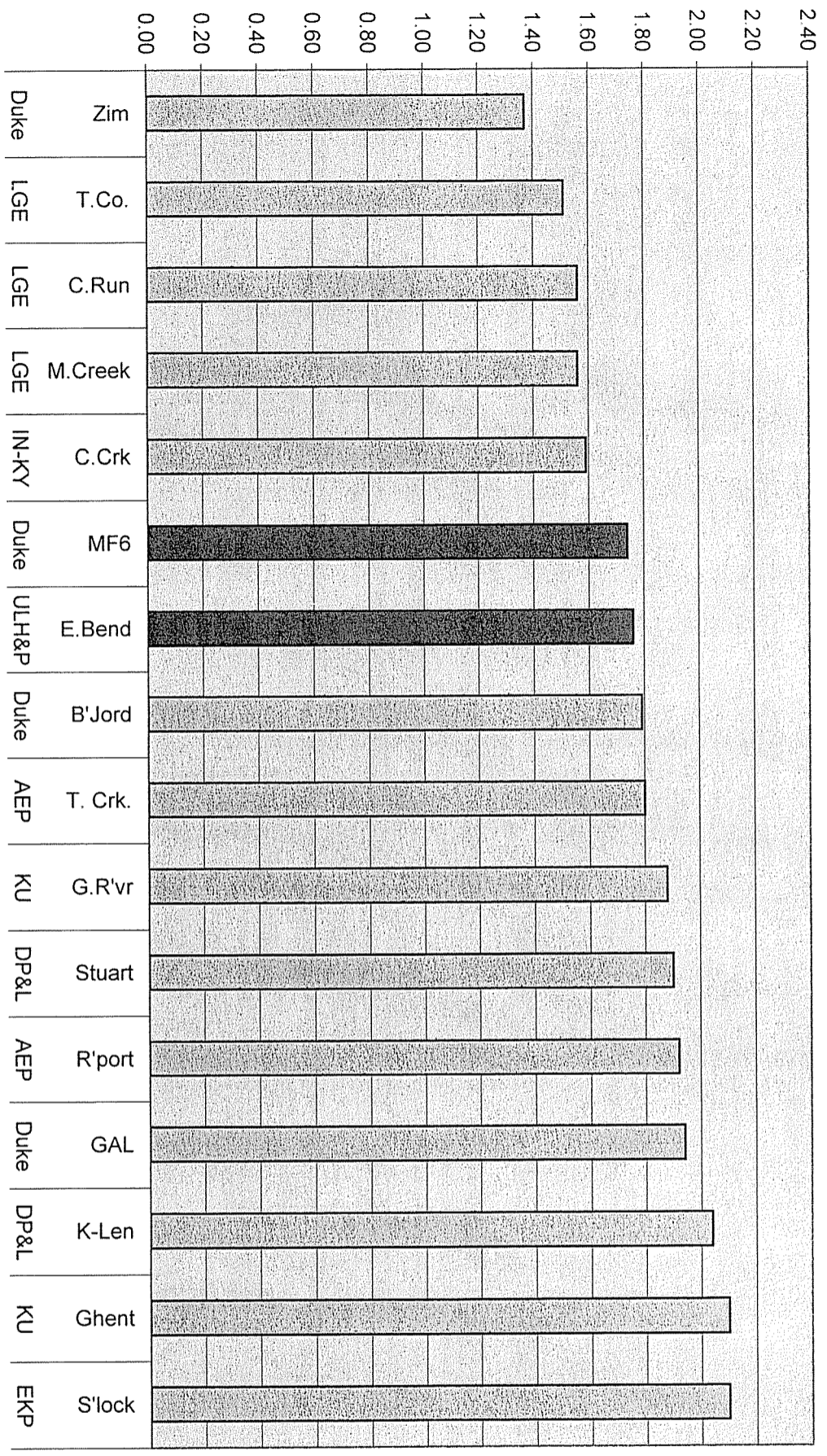
**RESPONSE:**

- a. See Attachment KyPSC-DR-Hearing-001(a).
- b. See response to KyPSC-DR-Hearing-001(a).

**PERSON RESPONSIBLE:** Elliott Baston

## Delivered Coal Cost Comparison

### \$/MMBtu - YTD May 2007



**KyPSC Staff Hearing Data Requests**  
**Duke Energy Kentucky Case No. 2007-00280**  
**Date Received: October 11, 2007**  
**Response Due Date: October 22, 2007**

**KyPSC-DR-HEARING-002**

**REQUEST:**

In response to Data Request 11, please provide the following information relating to Miami Fort unit 6 and East Bend:

- a. written fuel procurement policies
- b. delegation of authority policy; and
- c. organizational chart of the part of Duke Energy Corporation (reg and non-reg) responsible for fuel procurement, including names and titles.

**RESPONSE:**

- a. See Attachment KyPSC-DR-Hearing-002(a).
- b. See Attachment KyPSC-DR-Hearing-002(b).
- c. See Attachment KyPSC-DR-Hearing-002(c).

**PERSON RESPONSIBLE:** Elliott Baston  
Ryan Gentil

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9/23/04

# Policy and Procedure Manual

## Commercial Fuels

**CINERGY**  
the power of change

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September 23, 2004

## Policy and Procedures

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### Commercial Fuels

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## 1. Executive Summary

**CINERGY**  
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## 1.1 Overview

---

Commercial Fuels (“The Department”) of Cinergy Corp. (“The Company”), a holding company with multiple subsidiaries, provides a broad range of fuel procurement and transportation services for each of the Company’s fossil fuel generating stations. The Department is part of the Commercial Business Unit (CBU).

The Fuel Procurement and Transportation scope of services encompasses a variety of planning, projection, forecasting and budgeting functions, solicitations and evaluation of proposals for fuel and transportation contracts, selection and qualification of suppliers and shippers, contract negotiation, administration and enforcement, and ongoing transportation maintenance and operations support.

The Department is responsible for the prudent management of a significant portion of The Company’s annual operating budget. In recognition of this responsibility, the policies and procedures outlined in this Manual incorporate the common goal of achieving security of supply at the most economical cost per megawatt hour generated.

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## 1.2 Policy and Goal Setting

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The Fuel policies of The Company are determined by the Risk Policy Committee, with voting members consisting of:

- Chairman/President/Chief Executive Officer
- Chief Financial Officer
- Executive Vice President, Corporate Services
- Chief Risk Officer
- Chief Legal Officer

To keep abreast of and provide direction in an ever-changing coal market, this committee meets periodically to review and approve overall policies and objectives such as hedging strategy, inventory policy, and potential contracts for procurement of fuel.

The Department’s goals and strategies are developed consistent with these policies.

---

Executive Summary

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### **1.3 Strategic Planning**

---

The Department is responsible for establishing and implementing fuel strategy, optimum contract mix, and compliance with regulations applicable to fuel procurement.

The Department contributes to the budget and five-year business plan of the Commercial Business Unit (CBU). The business plan sets forth the methods and objectives necessary to procure fuel to meet the fuel demands of the Company.

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### **1.4 Organizational Structure**

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The Department is headed by the Vice President of Commercial Fuels, who reports to the President of the Commercial Business Unit (CBU). Five individuals report to the Vice President of Commercial Fuels:

- Vice President - Procurement and Origination
- Vice President - Logistics and Operations
- Director - Strategy and Structuring
- Manager - Business Analysis
- Manager - Market Planning.

---

### **1.5 Responsibility Scope**

---

The Department is responsible for procurement of all coal, oil, lime and limestone used at Company operated stations. The department is also responsible for ensuring quantity and quality of coal deliveries, arranging for the transportation of purchased fuel and fuel additives (lime & limestone), and determining coal capability and optimum selection. This includes preparation of records and reports for internal and external use. This external use includes information required by state regulatory agencies, Federal Energy Regulatory Commission reports and environmental compliance reports.

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Executive Summary

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## 1.6 Practices and Procedures

---

The Department forecasts the usage and associated expense of coal, oil and lime and bulk transportation for generating units owned by the Company and either operated by the Company or by other utilities. All values are expressed both on a managed basis and an equity basis.

---

## 1.7 Decision Making and Control

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Fuel purchases are made through a combination of long-term and spot market purchases. The optimal hedging strategy is determined by The Department and recommended for approval to the Risk Policy Committee. This optimal strategy is continually reviewed by The Department as market conditions dictate.

---

## 1.8 Internal and External Communication

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The Department has recognized internal customers within the Company and has identified the service standards required to meet the needs of these internal customers. The major internal customers of The Department are Power Operations and Cinergy Solutions. On a day-to-day basis, The Department must communicate with power stations to coordinate barge and train deliveries. The Department also maintains the ComTrac data processing system (Commodities Tracking System). This system allows the stations to enter all fuel data such as barge weights, coal quality, and vendor names for data base uses. This system also provides pricing mechanisms for determining proper coal payments and processing of accounting transactions.

The Department interfaces with Power Operations and Portfolio Optimization departments to determine unit operating schedules and unit dispatching calculations as related to fuel costs. Written estimates of fuel costs are submitted weekly via the Energy Cost Manual, which is a guide for unit dispatch.

# **Policy and Procedure Manual**

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## **Commercial Fuels**

### **2. Company Policies and Procedures**

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## 2.1 Objective

The Department evaluates its fuel and transportation services Policies and Procedures on a continuing basis and updates them as needed. The objective of this self-evaluation is the continuing assurance of effective Policies and Procedures as they relate to the changing business environment of The Company and the industry.

No Policy and Procedure Manual can consider all of the circumstances and conditions that exist or may arise in the industry. Therefore, the guidelines outlined in this Manual are subject to review and modification to reflect changing circumstances or needs of The Company, the effect of state and/or federal legislation, the orders or rules of any state commission, or any other event that may impact The Company's procurement and use of fuel.

---

## 2.2 Adherence to Company Policies

From time to time, The Company issues (and updates) policies governing the conduct of employees in their business relationships with others. The Department is responsible for assuring that its personnel comply in full with these policies. In addition to this basic responsibility, The Department recognizes that its operations require extensive communication with outside sources, particularly suppliers, shippers and other vendors. It is important that such communications be conducted in accordance with accepted Company guidelines. The Department, therefore, undertakes the following additional responsibilities: (1) To assure that its standards of conduct are made known to suppliers, shippers, vendors and others who have dealings with The Department, and (2) to provide for assurance in its contracts that parties contracting with The Department acknowledge, accept and will abide by such standards. Specifically:

### 2.2.1 Confidentiality of Documents

The Department will protect proprietary information as may be contained in documents such as contracts, proposals, audit reports, studies, task force reports, supporting work papers, etc.

### 2.2.2 Regulatory Requirements

The Department will provide appropriate protection in its contracts against violation of applicable regulatory requirements by any party contracting with The Department.

---

## Company Policies and Procedures

### 2.2.3 Legal Support

The Department recognizes that sound legal advice, obtained in a timely manner, can result in essential contract protection, effective resolution of disputes and commercial disagreement, and prevention of exposure to undue legal or business risk. The Department, therefore, undertakes to consult with legal counsel in areas that involve deviation to standard "approved" contract language.

### 2.2.4 Audits

The Department will cooperate with, and participate as necessary in, audits of its contracts and records, whether internal, external or regulatory in nature. Where suppliers' costs or procedures affect the price or provisions of the agreement, The Department will include appropriate audit rights in the contract. Additionally, The Department will assure that The Company's audit rights under applicable contracts are exercised and enforced.

### 2.2.5 Gifts, Gratuities and Conflicts of Interest

The Department is responsible for assuring compliance with Company policies against acceptance of gifts and gratuities and the establishment of relationships by any employee of The Department which may impair that employee's duty of primary loyalty to The Company.

### 2.2.6 Consultants

Where The Department secures the assistance of consultants, such services shall be contracted for in writing in standard Company format or as otherwise approved by counsel, such contracts to include, among other terms, a statement of work, a price or other form of cost estimate prescribing any applicable budgetary constraints, and The Company's standard confidentiality and other provisions.



# **Policy and Procedure Manual**

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## **Commercial Fuels**

### **3. Fuel Procurement**

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Fuel Procurement

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### 3.1 Contract Mix

---

A judicious balancing of short-term and long-term contracts is an effective way to achieve critical procurement goals such as:

- Assurance of adequate supply from reliable suppliers
- Competitive pricing
- Market intelligence
- Continuing evaluation of suppliers
- Flexibility in responding to changing market or economic conditions
- Efficient delivery of shipments.

The Department reviews its optimal contract mix on an ongoing basis as market conditions change, and the optimal contract mix will vary with the time horizon being evaluated.

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### 3.2 Quality

---

The Department will make every effort to purchase according to the requirements as identified of the boilers, gas turbines and auxiliary equipment for which it was purchased. Further, environmental regulations regarding emissions will be factored into purchasing efforts.

---

### 3.3 Specifications

---

Coal quality specifications may include moisture, ash, calorific value, sulfur, volatility, grindability, hydrogen, chlorine, ultimate analysis, mineral ash analysis, fusion temperature, etc. Specifications for all purchases made by The Department will include parameters required to assure compatibility with equipment operation and environmental compliance. Quality price adjustments will be made for deliveries not within specifications as outlined in contracts.

---

### 3.4 Evaluation

---

For longer term commitments, suppliers are generally evaluated on the basis of delivered cost, busbar evaluation, uncommitted proven reserves, reputation,

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**Fuel Procurement**

managerial integrity, credit strength, proximity to transportation, and willingness to extend commercial terms. Additional evaluation is done, as needed, concerning by-product handling, disposal, and various environmental limits at the station sites. For short-term purchases, the evaluation focuses primarily on evaluated cost relative to the market.

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**3.5 Review of External Conditions**

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The Department continuously reviews relevant market conditions and public information related to current and projected prices in source areas and, using available data and information, determines the appropriate contract/spot mix for each time horizon.

---

**3.6 Weighing, Sampling and Analysis**

---

Fuel/additive shipments are sampled and analyzed according to respective agreements. In the case of coal, the stations enter this information into the computerized system. This data is monitored by The Department and compared to quality specifications per the contract. A monthly report by station and supplier, listing quantity, quality and monthly weighted averages can be produced and used by The Department to compare to contract requirements. A separate report is used to determine the premiums/penalties to be applied to the monthly invoice.

Coal shipments delivered by barge and railroad are normally weighed by both the stations and suppliers. The stations may enter both of the weights into the computerized system. These weights are reviewed by The Department personnel for variances. Depending on the respective agreements, the generating station will enter either the supplier's or station's weight into the system. Accounting uses the system's reports to compare the tons received to tons invoiced.

Coal shipments delivered by trucks are also entered into the system, but the station weights are excluded at stations where The Company does not have truck scales.

---

**3.7 Force Majeure**

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When a force majeure event occurs, the party experiencing the force majeure will notify the affected party(s) according to their respective agreement. Coal supply and/or utilization related force majeure procedures are administered by the Manager of Fuel Supply.

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## 3.8 Vendor Management

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### 3.8.1 Supplier Complaints

The Company pursues the highest business and personal ethical standards. It also complies with all applicable laws, rules, and regulations, including insider-trading laws and applicable anti-trust laws.

To insure the above, suppliers will be notified (see "Exhibit 1: Vendor Notification Memo") of The Company's intent to comply with ethical and legal standards; and a means to report any violations via a Compliance Services Hot Line (Exhibit 1).

All existing vendors (counterparties) will be contacted via the memo in Exhibit 1. Any new vendors will be given the memo upon initial contact.

### 3.8.2 Authorized Approvals

Certain individuals within The Department have the authority to negotiate and execute fuel and related agreements on behalf of The Company. All vendors will be notified of these individuals and their authority level via a memo (see Exhibit 1).

# **Policy and Procedure Manual**

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The Department

## **4. Inventory Management**

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## Inventory Management

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### 4.1 Objective

The objective of this section is to maintain coal, alternate fuels and additives inventories at the levels established collectively by the applicable generating plants, The Department, Electric Systems Operations and other departments within The Company.

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### 4.2 General

Inventory ranges for each generating plant are established periodically by The Department after communication and interaction with the generating stations and other appropriate departments. When actual inventory levels vary from the desired levels, action is taken based on a comprehensive evaluation of all relevant operational and market factors at that time. Periodic physical inventory measurements are made for verification/reconciliation with The Company records.

---

### 4.3 Responsibility

It is the responsibility of the department managers in concert with the generating stations, to maintain the coal, alternate fuels and additives inventories at the established budgeted levels.

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### 4.4 Strategy

The Department develops optimum coal inventory strategies consistent with the generating stations' load and coal contractual requirements. The computer system reports are monitored to ensure that coal inventories are being maintained at planned levels. The generating plants monitor the inventory of alternate fuels and additives, and inform The Department when additional supply is needed.

---

### 4.5 Physical Inventory

As a part of the overall internal control process related to the management and accounting for fuel inventories, The Company periodically conducts coal stock-pile surveys. These surveys provide substantiation of the inventory balances on a periodic basis and account for material differences between book and actual inventories.

---

Inventory Management

There are other primary controls in place to ensure that day-to-day measuring and reporting for coal stocks is accurately performed. However, due to the magnitude of coal processed, the impact of moisture as coal is stockpiled and the errors which can occur in the weighing process; periodic physical inventories are necessary to maintain proper control.

The survey is done annually (usually in August) with adjustments made to Book and Operational inventories in December of the same year. An aerial survey is used along with density testing and moisture analysis to determine the physical quantity on-hand. The actual adjustment calculation is governed by separate rules for each operating company. Final Book and Operational adjustments are made to the Fuels Management System (ComTrac) for generation of journal entries to adjust the Income and Balance Sheets of the Corporation.

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Transportation Administration

## **Policy and Procedure Manual**

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### **Commercial Fuels**

## **5. Transportation Administration**



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## 5.1 Transportation Administration Overview

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### 5.1.1 Objective

The objective of The Department is to procure the efficient, dependable and economic transportation of fuel or additives (SO<sub>2</sub> sorbents) to The Company's fossil generating plants. The transportation mode may be rail, barge, truck or gas pipeline.

### 5.1.2 General

Where feasible, fuel or SO<sub>2</sub> sorbents can be transported to the appropriate fossil generating plants under either a short-term contract, long-term contract or tariff. In the case of Rail, the potential acquisition of leased and/or purchased equipment is reviewed with particular attention to the resulting economic value achieved through efficient railcar utilization.

Whenever appropriate, any combination of rail, barge and truck modes of transportation may be used to facilitate the delivery of fuel or SO<sub>2</sub> sorbents.

### 5.1.3 Responsibility

It is the responsibility of The Department to manage the transportation of fuel or SO<sub>2</sub> sorbents to The Company's fossil generating plants. It is also The Department's responsibility during the term of the agreement, to ensure that the carrier/shipper and The Company are in compliance with the obligations of the agreement.

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## 5.2 Transportation Procurement

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Alternative transportation proposals are evaluated in conjunction with projected fuel or SO<sub>2</sub> sorbent supplies to determine the optimum delivered price.

For trucks, a list is maintained of trucking companies with the capability to service the station requirements. The Transportation Manager updates this list periodically based upon performance, price competitiveness, safety records, and general market intelligence available through a number of resources. As agreements are entered into for fuel or SO<sub>2</sub> sorbents to be delivered by truck, open purchase orders or individual trucking contracts may be issued to one or more trucking companies who can supply the service and provide the optimum delivered price.

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## 5.3 Transportation Contract Administration

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### 5.3.1 Objective

The objective of this section is to develop, negotiate and execute transportation contracts that provide for control and operating flexibility with optimum economic benefits. The contracts may be for any mode (rail, truck, barge, gas pipeline) of transport.

### 5.3.2 General

In order to administer the provisions outlined in the Transportation Contracts and to enforce compliance among the appropriate parties, it is necessary to perform regular, periodic reviews of the terms and conditions contained in each executed contract. The specific performance requirements should be reviewed and administered on a regular basis.

### 5.3.3 Responsibility

The Manager of Transportation develops and negotiates transportation contracts.

### 5.3.4 Procedures

The Department's Field Managers/Representatives or Analysts are responsible for verifying that origin, destination, volume requirements and other terms and conditions follow the respective agreements.

Performance standards, loading/unloading constraints and other operational considerations are covered in the agreement or under a published tariff which is referenced by the respective agreement. Compliance with these standards is verified by The Department's Field Managers/Representatives or Analysts.

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## 5.4 Transportation Railcar Maintenance

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### 5.4.1 Objective

The objective of this section is to develop the strategies and coordinate the research necessary to maintain an economically competitive railcar maintenance program.

### 5.4.2 General

Regular communication combined with the efficient consolidation of industry knowledge obtained from railcar manufacturers, carrying railroads, railcar repair facilities, the ICC and AAR is vital in the development of a cost competitive railcar maintenance program. Short-term and long-term strategies focusing on the procedures necessary to test new railcar components, as well as the procedures necessary to evaluate the efficient utilization of railcar repair shops located at designated power plants, should be researched.

### 5.4.3 Responsibility

The Manager of Transportation develops the strategies and coordinates the research necessary to maintain an economically competitive railcar maintenance program.

### 5.4.4 Procedures

Outside contractors are used for railcar maintenance and repair work. Such contractor(s) must possess a thorough knowledge and understanding of AAR and specifications, proper repair facilities and mobile equipment and the necessary AAR licenses. Thus, arrangements must be made with a qualified and reputable rail equipment maintenance company to handle the routine inspection and repair of the equipment, as well as any extraordinary repair work. Inherent to the successful accomplishment of this policy is a good working knowledge of AAR rules and regulations by the Transportation Logistics Analyst. Additionally, related AAR reference material must be maintained by The Department.

# **Policy and Procedure Manual**

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## **Commercial Fuels**

### **6. ComTrac Fuel Management System**

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## 6.1 ComTrac System Description

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### 6.1.1 General

ComTrac is a purchased software package. FusionSoft LLC in partnership with The Company, developed the application.

ComTrac manages the life-cycle of procuring, shipping, distributing, analyzing, and accounting for fuel related commodities. It is a web-based application that runs in a browser. It is presented in a familiar tree-view style with object nodes in the left pane and detail presented in the right.

There are six (6) primary modules: Budgeting, Contract, Shipment, Quality, Inventory, and Accounting. There is also an Administration function that allows for the maintenance of supporting data.

There is a detailed procedure manual included as a Help System document that is available in hard copy and through the on-line system.

### 6.1.2 Responsibility

The ComTrac Administrator is responsible for managing product upgrades, interaction with clients and management regarding system operation and information requests.

### 6.1.3 System Overview

The system provides the following functions:

#### 6.1.3.1 Budget

The budgeting process tracks commodity inventory levels (forecast and actual) for all storage locations for an operating company on an annual basis. It estimates inventory levels based on: Current inventory balances, expected receipts from contracts, consumption, and accounting transactions. It forecasts consumptions based on historical consumption and allows manual overrides as conditions dictate. Budgets can be generated automatically with key components editable.

A shipment planning tool allows for the scheduling of actual shipments. Reports are available to review budget and planning data.

#### 6.1.3.2 Contract

ComTrac tracks coal, fuel oil, lime, limestone, propane, natural gas, and transportation contracts. Contract related information maintained, includes: General

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## ComTrac Fuel Management System

terms, commodity description, commodity characteristics (e.g. sulfur content of coal), prices, and pricing formulas. The text of the agreement is not maintained.

Each contract may include multiple commodities within a fuel type. For example, the contract may include a low sulfur coal shipped and priced from a particular mine; and another low sulfur coal from another mine with different specifications and pricing.

All quality and pricing is maintained at a commodity (e.g. Ajax mine low sulfur coal) level. Each commodity may have multiple quality characteristics (e.g. sulfur, moisture, ash), with the ability to change the characteristic value over time. Each commodity may also include multiple price components. A price component may be a base price, pricing formula, a formula component or a value representing different types of pricing (e.g. index pricing, volume pricing, refund, flat rate).

A Transportation contract defines a service performed by a carrier to transport a commodity for one or more specified route segments (origin/destination). Multiple rates may be maintained for each route segment based on effective date.

### 6.1.3.3 Shipment

A shipment represents a quantity of a commodity shipped by a supplier to a destination in accordance with contract requirements. The shipment is assigned to a contracted commodity for pricing and quality specifications. Each shipment is assigned a route segment that is defined in a carrier contract. A shipment can be defined as a single train, a single barge, or a group of trucks for a given day.

The shipment can go through a life-cycle consisting of "Shipped," "Arrived," "Partially Unloaded," and "Unloaded." The shipment can also take on a status of "Void" if the shipment has been overridden with new information.

Shipments may be manually entered or automatically created through an electronic interface program that downloads a carrier's shipping file to ComTrac. A shipment is created in "Shipped" status, verified, and may be assigned quality specifications as measured by the supplier or carrier.

### 6.1.3.4 Quality

An analysis can be recorded for any type of test required on a commodity. Each type of analysis has a set of analysis characteristics defined. When the analysis type is selected, the appropriate analysis characteristics are displayed and the values may be entered. For example, the short-proximate analysis includes analysis for sulfur, moisture, ash, and BTU content of coal received.

Sample and analysis information can be provided by either a supplier, the client's (station) lab, or a third party lab. The data may be manually entered or electronically sent through an interface that transfers analysis results to ComTrac.



ComTrac Fuel Management System

Multiple samples and associated results can be stored as well as multiple analysis for a sample. This will allow:

- Recording multiple coal sample analyses from a shipment unloaded over more than one day.
- Recording multiple analyses for samples from coal distributed to a bunker and separately to units.
- Recording results from station, supplier or third-party laboratories.

**6.1.3.5 Inventory**

Inventory Details for Low Sulfur Pile from: 1/1/2002 to: 12/31/2002		
Field		Value
Beginning Inventory		239,677.51
Receipts		-14,386.42
Adjustments	Operational	0.00
Reclaims		-7,791.70
Transfers		0.00
Consumed		0.00
Ending Inventory		217,499.39
In-Transit/Paid		8,115.79
In-Transit/Unpaid		11,050.19
Ending Inventory w/In-Transit		236,665.37

The Inventory Module maintains the inventory levels for a fuel item in an inventory location (e.g. station bunker or coal pile). It allows one to create and edit Reclaim (transfer from storage location to bunker), Transfer and Adjust quantities; and for selected stations, create and edit consumption levels. It also displays all the transactions (receipts, consumed, reclaim, and adjustments) that were generated to calculate an inventory level for a specific time period. Inventory levels are maintained on a monthly basis.

The sample screen (above) calculates the operational inventory level for a specified time frame for a storage location.

When a shipment distribution is unloaded to a storage location, two inventory transactions are generated: Shipment **Receipt** and **Consumption**. The quantity unloaded is added to inventory as a receipt and subtracted from inventory as a consumption. Stations may record this consumption directly from equipment that measures fuel use directly - these stations are identified in the database and manually record Consumption through the Inventory Module.

**Inventory Adjustments** are input manually through the Inventory module on an as needed basis. Inventory **Transfers** are handled like reclaims but represent a movement of fuel from one station/location to another station/location; reclaims are within a station. **Intransits** represent shipments paid for but not necessarily received - for example if payment is based on shipped date (defined in contract), the tonnage supplied by the supplier is considered a part of operational and accounting inventory.

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ComTrac Fuel Management System

### **6.1.3.6 Accounting**

Accounting processes and records the payment of fuel and fuel transportation vendors. It determines accounting inventory values, generates supporting transactions, rolls up transactions to General Journal entries for monthly closing, and calculates joint owner share of fuel costs. Accounting also creates a file from the journal entries to the corporate accounting system. It provides transactions by company, fuel type, vendor, station, commodity, and time period.

The primary Accounting processes include:

#### 6.1.3.6.1 Generate Transportation Costs

This process records the transportation cost liability associated with a fuel shipment. This transaction will credit a carrier liability account (payable) and debit (increase) the inventory value of coal by the transportation cost (rate times quantity). The process may also generate a Payment Voucher to authorize payment to the carrier. A report is generated to document the calculation.

#### 6.1.3.6.2 Generate Base Cost

This process creates the initial liability to the vendor for selected shipments. It generates transactions to record a fuel liability (payable - credit) and an associated inventory transaction (debit); for the base cost times the weight of record. This process sets the stage to issue a Payment Voucher for the initial payment for the month to the coal vendor. It also generates a confirmation report.

#### 6.1.3.6.3 Issue Payment Voucher

This process eliminates the liability (payable) that was created and authorizes payment to the supplier for the base cost of the coal for a selection of shipments.

#### 6.1.3.6.4 Generate Base and Adjustment Costs

This process calculates or re-calculates if there has been a price change, the base cost for each shipment meeting the selection criteria. It records a liability transaction for the base cost of the commodity and increases Fuel Inventory (debits). It also calculates any price adjustment transactions based on contract formulas.

#### 6.1.3.6.5 Generate Consumption Costs

Generate Consumption costs generates transactions to reflect the quantity and value of fuel consumed. The value is determined by a weighted average cost of available inventory. Transactions are generated for shipment distributions, manual consumptions, reclaims, or adjustments to bunkers.



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ComTrac Fuel Management System

6.1.3.6.6 Generate Journal Entries

Generate Journal Entries groups Fuel Accounting Transactions and ties them to specific General Journal Line Items. The General Journal Line Items represent individual entries in a specific Fuel Journal (e.g. "FJ127" - Coal Purchase) tying fuel costs to certain areas (for example, station and commodity). These entries are then posted to the corporate accounting system.

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## **6.2 ComTrac System Security**

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Security is established at the Application, Module, and Menu Item level for each client. Each module uses a Selection Criteria process to filter the data presented in the tree-view. This criteria might include: Time period, vendor, station, commodity.

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September 23, 2004

## Policy and Procedures

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The Department

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## Exhibits

**CINERGY**  
the power of change

Exhibits

**Exhibit 1: Vendor Notification Memo**

Dear Vendor:

This is to advise you of the individuals at \_\_\_\_\_ (*PSI or CG&E or Cinergy Solutions* pick one) (“the Company”) who have the authority to negotiate and execute fuel and related agreements on behalf of the Company.

- Execution of coal transactions with a term of three months or less, and a purchase volume of 60,000 tons or less: **V.P. Logistics & Operations or Manager of Fuel Supply.**
- Execution of coal transactions with a term of one year or less, and a commitment of \$50 million or less: **V.P. Procurement & Origination.**
- Execution of coal transactions with a term of three years or less, and a commitment of \$100 million or less: **V.P. Commercial Fuels.**
- Execution of coal transactions with a term of greater than three years, or a commitment greater than \$100 million: **President Commercial Business Unit (CBU).**
- Execution of lime, limestone and fuel oil transactions: **V.P. Logistics & Operations.**
- Negotiation of coal, lime, limestone, and fuel oil transactions: **Manager of Fuel Supply, V.P. Logistics & Operations, V.P. Procurement & Origination, V.P. Commercial Fuels.**

Fuel and related transactions are purchased in accordance with the Company’s policies and procedures. Its Code of Business Ethics and Conduct guide the Company procurement practices. The Company pursues the highest business and personal ethical standards as well as compliance with all applicable laws, rules, and regulations, including insider-trading laws and applicable anti-trust laws.

If you suspect a violation of any of the Company’s policies, you may report such suspicions at the Compliance Services Hot Line at 800-354-2714, 24 hours/7 days a week and a representative will contact you.

If you have any questions concerning this information, please contact me at (513) 419-5434.

Sincerely,

# Portfolio Hedge Strategy

Year	Prompt	+1	+2	+3	+4
Kentucky	75% - 95%	55% - 75%	25% - 45%	0 - 25%	0

General guidelines for mid-year fixed price hedge coverage

Delegation of Authority

Authorized Approver or Designee (Last, First)	Location (Station, Operation Center, etc.)	LAN ID	Employee ID	BEO Job Group	Title	Manager	Expenditures or Commitments Included as a Component of a Previously Approved Transaction	Expenditures or Commitments Included as a Component of a Previously Approved Transaction	Supplemental Funding Requests for Previously Approved Transactions	Purchases or Sales of Commodities, Storage, Transportation or Capacity (2)			Outgoing Credit Support, Guarantees and Warranties	Credit Extensions / Exceptions	Cash Advances / Expense Reports	Check Requests / Wire Transfers	Exceptions	System Access
										Indirect, Cost Plus, or Reimbursable or Tariff Contracts	Fixed Price Contracts	Less than 5 years in term						
Types of Transaction																		
Terms																		
						Capital Projects, Commitments to Buy Products or Services, Equity Investments (Including Acquisitions, Partnerships, Joint Ventures, etc), Divestitures, Operating and Capital Leases, Termination of Commodities Contracts		Based on (a) Greater of the Overrun Amount or Original Cost and (b) Subject to a Dollar Cap					Including Loss of Credit, Performance Bonds, Surety Letters, Commitments and Warranties			Limit to be consistent with approval in each category		
						Routine and Less than 5 years in term	\$ 5,000,000	\$ 2,500,000	\$ 5,000,000	\$ 5,000,000	Greater of \$2 million or 10% of original approved amount	\$30 million for Wholesale Business, \$50 million for Fossil Fuel	Less than 5 years in term	Less than 5 years in term	Less than 5 years in term			
						Non-Routine	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$10 million for Wholesale Business, \$7.5 million for Wholesale Business	Less than 5 years in term	Less than 5 years in term	Less than 5 years in term				
							\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$8 million for Wholesale Business	Less than 5 years in term	Less than 5 years in term	Less than 5 years in term				
							\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$25 million for Fossil Fuel	Less than 5 years in term	Less than 5 years in term	Less than 5 years in term				
							\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$40 million for Wholesale Business	Less than 5 years in term	Less than 5 years in term	Less than 5 years in term				
							\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$5 million for Wholesale Business	Less than 5 years in term	Less than 5 years in term	Less than 5 years in term				
							\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$5 million for Wholesale Business	Less than 5 years in term	Less than 5 years in term	Less than 5 years in term				
							\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$5 million for Wholesale Business	Less than 5 years in term	Less than 5 years in term	Less than 5 years in term				
							\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$5 million for Wholesale Business	Less than 5 years in term	Less than 5 years in term	Less than 5 years in term				
							\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$5 million for Wholesale Business	Less than 5 years in term	Less than 5 years in term	Less than 5 years in term				

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 DOA and Supply Chain Systems Page 1 of 10



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Delegation of Authority

Authorized Approver or Designee (Last, First) Bilson, M Elliot	Location (Station, Operation Center, etc.) US FEGS, Portfolio Optimization	EEO Job Group	Title Manager	Employee ID 138400	LAN ID mab6537	Terms	Expenditures or Commitments to Be Included as a Component of a Previously Approved Transaction		Supplemental Funding Requests for Previously Approved Transactions	Purchases or Sales of Commodities, Storage, Transportation or Capacity (2)			Outgoing Credit Support, Guarantees and Warranties	Credit Extensions / Exceptions	Cash Advances / Expenses Reports	Check Requests / Wire Transfers	Exceptions	System Access		
							Expenditures or Commitments to Be Included as a Component of a Previously Approved Transaction	Expenditures or Commitments to Be Included as a Component of a Previously Approved Transaction		Fixed Price Contracts	Indexed, Cost Plus, or Reimbursable or Term Contracts	Option Contracts								
Type of Transaction >>>>																				
Capital Projects, Commitments to Buy Investments (Including Acquisitions, Partnerships, Joint Ventures, etc), Divestitures, Operating and Capital Leases, Termination of Commodities Contracts							Routine and Less than 5 years in term. \$ 5,000	Non-Routine and Less than 5 years in term. \$ 5,000	Based on (a) Greater of the Overrun Amount or Overrun as a % of Original Cost and (b) subject to a Dollar Cap	Fixed Price Contracts	Indexed, Cost Plus, or Reimbursable or Term Contracts	Option Contracts	Including Letters of Credit, Performance Bonds, Surety Letters and Warranties							
Terms >>>>																				
						Routine and Less than 5 years in term. \$ 5,000	Non-Routine and Less than 5 years in term. \$ 5,000								\$ 5,000					
Indicate with an X																				
MAPPs																				
Peopleson																				
CAPS																				
Advantage Nuclear																				
Contracts for the purchase of coal, lime, and limestone, and the associated transportation, when contracts contain the minimum contractual parameters (yearly quantity and unit price) - \$5,000,000																				

(1) Delegation of authority granted by the U. S. Franchised Electric & Gas Chief Operating Officer

Authorized By: Melissa Manis  
Title: SVP Regulated Portfolio Optimization Fuels  
Date: 9/13/07

COMMERCIAL BUSINESS - EXECUTIVE GROUP  
DELEGATION OF AUTHORITY

Type Action	Authorized Approver or Designee (Last, First)	Location (Station, Operation Center, etc.)	LAN ID	Employee ID	EEO Job Group	Title	Manager	Expenditures, Divestitures & Terminations: (See Footnotes: 1,2,3,4,5,6,7 & 12)	Purchases or Sales of Commodities, Storage, Transportation, Capacity or Other Sales (See Footnotes: 1,2,3,6,7,8 & 9)	Supplemental Funding Requests for Previously Approved Transactions (See Footnotes: 1, 2 & 3)	Outgoing Credit Support, Guarantees and Warranties (Including Letters of Credit, Performance Bonds, Surety Bonds, Comfort Letters and Warranties) (See Footnotes: 1,2,3 & 10)	Incurrence of Debt, Issuance of all Corporate Securities, Excluding Common Stock (See Footnotes 1, 2, 3 & 11)	Expenditures or Commitments Included as a Component of a Previously Approved Transaction (See Footnotes: 1, 2 & 3)	Expense Reports / Cash Advances (See Footnotes: 1, 2 & 3)	Check Requests / Wire Transfers (for transactions that have not been previously approved) (See Footnotes: 1, 2 & 3)	Credit Extensions / Exceptions (See Footnotes: 1, 2 & 3)	Exceptions	System Access	
	LIMITS ARE FOR TRANSACTIONS LESS THAN 5 YEARS IN TERM UNLESS OTHERWISE STATED																		
Indicate with an X								Capital Projects, Commitments to Buy Products or Services, Equity Investments (Including Acquisitions, Partnerships, Joint Ventures, etc.), Divestitures, Operating and Capital Leases, Termination of Commodities Contracts (See Footnotes: 1,2,3,4,5,6,7 & 12)	Indexed, Cost Plus, Reimbursable or Tariff Contracts Option Contracts	Supplemental Funding Requests for Previously Approved Transactions (See Footnotes: 1, 2 & 3)	Outgoing Credit Support, Guarantees and Warranties (Including Letters of Credit, Performance Bonds, Surety Bonds, Comfort Letters and Warranties) (See Footnotes: 1,2,3 & 10)	Incurrence of Debt, Issuance of all Corporate Securities, Excluding Common Stock (See Footnotes 1, 2, 3 & 11)	Expenditures or Commitments Included as a Component of a Previously Approved Transaction (See Footnotes: 1, 2 & 3)	Expense Reports / Cash Advances (See Footnotes: 1, 2 & 3)	Check Requests / Wire Transfers (for transactions that have not been previously approved) (See Footnotes: 1, 2 & 3)	Credit Extensions / Exceptions (See Footnotes: 1, 2 & 3)	Exceptions	System Access	
Change								Routine Transaction (Transactions which are frequently occurring within the normal course of business or included within the approved plan or approved budget) Non-Routine Transactions (Transactions which do not fall under the definition of Routine)	Fixed Price Contracts Option Contracts	Up to the greater of \$10 million or 10% of original approved amount, and total overran capped at \$15 million Dollar amount of approved amount and 10% of original approved amount, and total overran capped at \$15 million	<=\$100 million and prior approval of Corporate Treasurer, or <=\$100 million may be approved solely by Corporate Treasurer	<=\$100 million may be approved solely by Corporate Treasurer > \$100 million but <=\$500 million must be approved by the Treasurer and Corporate CFO	Limited to the \$ amount of the expense or commitment (Component of a contract/transaction approved by the President/CEO)	<=\$1MM	<=\$10MM	<=\$10MM		MAPPs PeopleSoft CAPS Indus/Passport (Midwest) IE Tool RFPs Wire Transfers Advantage Nuclear	
Add	O'Connor, Thomas C.	Commercial Businesses	toconnor	200151		Group Executive & President, Commercial Businesses	Jim Rogers	<=\$25MM <=\$5MM	<=\$100MM <=\$500MM <=\$5,000 lots or \$10MM premium	Transactions < 5 years in term For DukeNet: Transactions <= 25 years in term where the amount paid or received is <=\$2.5 million over the life of the contract. See Note 13.	<=\$100 million and prior approval of Corporate Treasurer, or <=\$100 million may be approved solely by Corporate Treasurer	<=\$100 million may be approved solely by Corporate Treasurer > \$100 million but <=\$500 million must be approved by the Treasurer and Corporate CFO	<=\$1MM	<=\$10MM	<=\$10MM	<=\$10MM		MAPPs PeopleSoft CAPS Indus/Passport (Midwest) IE Tool RFPs Wire Transfers Advantage Nuclear	
Change	Bary, Paul H.	Mergers & Acquisitions	Phbarr1	236508		Senior Vice President & Chief Development Officer	Tom O'Connor	<=\$12.5MM Transactions < 5 years in term; => 5 years if the dollar amount is <=\$5 million	<=\$75MM <=\$250MM \$9MM premium	<=\$5MM Transactions < 5 years in term; => 5 years if the dollar amount is <=\$5 million	<=\$75MM <=\$100 million and prior approval of Corporate Treasurer, or <=\$100 million may be approved solely by Corporate Treasurer	<=\$100MM	<=\$500K	<=\$10MM	<=\$10MM	<=\$10MM		MAPPs PeopleSoft CAPS Indus/Passport (Midwest) IE Tool RFPs Wire Transfers Advantage Nuclear	
Change	McGee, Richard Kelly	Duke Energy International	RKMcGee	212111		President, Duke Energy International	Tom O'Connor	<=\$12.5MM Transactions < 5 years in term; => 5 years if the dollar amount is <=\$5 million	<=\$75MM <=\$250MM \$9MM premium	<=\$5MM Transactions < 5 years in term; => 5 years if the dollar amount is <=\$5 million	<=\$75MM <=\$100 million and prior approval of Corporate Treasurer, or <=\$100 million may be approved solely by Corporate Treasurer	<=\$100MM	<=\$500K	<=\$10MM	<=\$10MM	<=\$10MM		MAPPs PeopleSoft CAPS Indus/Passport (Midwest) IE Tool RFPs Wire Transfers Advantage Nuclear	
Change	Davis, Curtis H.	Non Regulated Generation	chd4591	125238		Senior Vice President, Midwest Generation Operations	Tom O'Connor	<=\$5MM Transactions < 5 years in term; => 5 years if the dollar amount is <=\$5 million	<=\$75MM <=\$250MM \$9MM premium	<=\$5MM Transactions < 5 years in term; => 5 years if the dollar amount is <=\$5 million	<=\$75MM <=\$100 million and prior approval of Corporate Treasurer, or <=\$100 million may be approved solely by Corporate Treasurer	<=\$100MM	<=\$300K	<=\$10MM	<=\$10MM	<=\$10MM		MAPPs PeopleSoft CAPS Indus/Passport (Midwest) IE Tool RFPs Wire Transfers Advantage Nuclear	
Change	Whillock, Charles R.	Commercial Asset Management	T96812	096612		Senior Vice President, Commercial Asset Management	Tom O'Connor	<=\$5MM Transactions < 5 years in term; => 5 years if the dollar amount is <=\$2.5 million	Refer to Energy Commodity Trading (ECT) DOA - Commercial Asset Management	<=\$5MM Transactions < 5 years in term; => 5 years if the dollar amount is <=\$2.5 million	<=\$75MM <=\$100 million and prior approval of Corporate Treasurer, or <=\$100 million may be approved solely by Corporate Treasurer	<=\$100MM	<=\$300K	<=\$10MM	<=\$10MM	<=\$10MM		MAPPs PeopleSoft CAPS Indus/Passport (Midwest) IE Tool RFPs Wire Transfers Advantage Nuclear	
Change	van Kempen, Wouter T.	Duke Energy Generation Services	WTVanKe	242514		President, Duke Energy Generation Services	Tom O'Connor	<=\$5MM Transactions < 5 years in term; => 5 years if the dollar amount is <=\$2.5 million	<=\$20MM <=\$20MM Transactions < 3 years in term	<=\$5MM Transactions < 5 years in term; => 5 years if the dollar amount is <=\$2.5 million	<=\$20MM <=\$20MM Transactions < 3 years in term	<=\$100MM	<=\$300K	<=\$10MM	<=\$10MM	<=\$10MM		MAPPs PeopleSoft CAPS Indus/Passport (Midwest) IE Tool RFPs Wire Transfers Advantage Nuclear	

**COMMERCIAL BUSINESS - EXECUTIVE GROUP  
DELEGATION OF AUTHORITY**

Type Action	Types of Transaction										System Access					
	Authorized Approver or Designee (Last, First)	Location (Station, Operation Center, etc.)	LAN ID	Employee ID	EEO Job Group	Title	Manager	Expenditures or Commitments Included as a component of a Previously Approved Transaction (See Footnotes: 1, 2 & 3)	Incurrence of Debt, Issuance of all Corporate Securities, Excluding Common Stock (See Footnotes 1, 2, 3 & 11)	Outgoing Credit Support, Guarantees and Warranties (Including Letters of Credit, Performance Bonds, Surety Letters and Warranties) (See Footnotes: 1, 2, 3 & 10)		Purchases or Sales of Commodities, Storage, Transportation, Capacity or Other Sales (See Footnotes: 1, 2, 3, 6, 7 & 9)	Supplemental Funding Requests for Previously Approved Transactions (See Footnotes: 1, 2 & 3)	Expense Reports / Cash Advances (See Footnotes: 1, 2 & 3)	Check Requests / Wire Transfers (for transactions that have not been previously approved) (See Footnotes: 1, 2 & 3)	Credit Extensions / Exceptions (See Footnotes: 1, 2 & 3)
Indicate with an X	<p align="center"><b>LIMITS ARE FOR TRANSACTIONS LESS THAN 5 YEARS IN TERM UNLESS OTHERWISE STATED</b></p> <p>Capital Projects, Commitments to Buy Products or Services, Equity Investments (including Acquisitions, Partnerships, Joint Ventures, etc.), Divestitures, Operating and Capital Leases, Termination of Commodities Contracts (See Footnotes: 1, 2, 3, 4, 5, 6, 7 &amp; 12)</p> <p>Routine Transaction (Transactions which are frequently occurring within the normal course of business or included within the approved plan or budget)</p> <p>Non-Routine Transactions which do not fall under the definition of Routine</p>										Indicate with an X					
Change	Grigsby, Philip C.	Business Development	PCGigsby	201676		Vice President, Business Development	Tom O'Connor	Refer to Energy Commodity Trading (ECT) DOA - Business Development								
Add	Wolf, Gregory C.	Commercial Infrastructure & Investment Management	T19097	019097		Vice President, Commercial Infrastructure & Investment Management	Tom O'Connor	For DukeNet: Transactions <= 25 years in term where the amount paid or received is <=\$2.5 million over the life of the contract.								
Delete	Sims, Bobbie A.	Commercial Businesses	bas5190	159086		Executive Assistant II	Tom O'Connor									

**FOOTNOTES**

- For Transactions that require President & CEO approval and above, the Transaction Approval Process must be followed, including a review by the Transaction Review Committee. Guidelines and requirements related to the Transaction Approval Process can be found in the Financial Analysis Manual.
- A brief informational report must be provided to the Secretary of the Transaction Review Committee for material changes in project scope which were originally approved by the President & CEO and above, including changes that may not have a monetary impact (e.g., a change in the location of a proposed power plant, a significant change in counterparties involved in the project). The Secretary will work with the Chair to determine what, if any, additional approval is required.
- The President & CEO shall cause the Board of Directors to receive an informational briefing of Transactions > \$25 million, which do not otherwise require approval by the Board of Directors. These informational briefings are coordinated by the Board Secretary.
- For termination of commodities contracts, the value of the terminated transaction will be based on the fair market value or net cash settlement, whichever is greater. Refer to the Commodity Risk policy.
- Procurement of goods and services must follow the guidelines in the Purchasing Controls policy.
- Approvals for the purchase of fossil and nuclear fuel for U.S. Franchised Electric and Gas are subject to approval limits for purchases or sales of commodities, storage, transportation or capacity, or other sales.
- These Transactions must comply with the Commodity Risk policy. Each business unit must maintain a list of authorized commodities.
- For Exchange-traded and financially settled contracts involving options, the value of the contract will be measured based on total volumetric lots or the total value of the premium, whichever measurement method requires the higher level of approval. One lot = one NYMEX contract for natural gas, crude oil, petroleum products, and NGLs; for power, one lot = 1,000 MWh. For indexed commodity Transactions, the dollar amount of the transaction will be calculated by multiplying the current index price(s) relevant to the transaction by the total volume(s) scheduled to be delivered or received under that transaction.
- Refer to the Guarantees and Letters of Credit section of the Financing Activity and Financial Risk Management policy, and Surety Bonds policy for required approvals.
- Corporate securities include, but are not limited to, all preferred stock, hybrid securities, and debt. The Corporate CFO must approve the interest rate for any debt issuance.
- Any Transaction which causes a material change to Duke Energy's capital structure (e.g., consolidation of debt resulting from an increase in ownership percentage) will also require the prior approval of the Corporate Treasurer.
- DukeNet transaction guidelines were defined in a Request for Exception approved by Steve Young and Jim Rogers on 3/27/07.

See *Approval of Business Transactions Policy* for approval limits for the Duke Energy Board of Directors, President & CEO, Direct Reports to the Chairman. See requirements included in the *Approval of Business Transactions Policy*.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 \_\_\_\_\_ Tom O'Connor, Group Executive & President

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 \_\_\_\_\_ Steven Young, VP & Controller, Duke Energy



Delegation of Authority - Energy Commodity Trading  
Commercial Asset Management

Position Title	FIXED Price Physical, Financial or EFS Contracts NOTIONAL DOLLAR VALUE		INDEX Price Physical, or BASIS Contracts VOLUMETRIC LOTS (1 lot = 1,000 MWh or 1 lot = 1,000 barrels)		Full Requirements Contracts NOTIONAL DOLLAR VALUE		Transportation, Transmission, Storage, Capacity, Tolls or Heat Rate Options NOTIONAL DOLLAR VALUE		Option Contracts VOLUMETRIC LOTS and TOTAL DOLLAR VALUE OF PREMIUM	
	(Note 1) (See Note C)		(See Note C)		(Note 3) (See Note C)		(Note 4) (See Note C)		(Note 5) (See Note C)	
	Current 12 Months	Subsequent 24 Months	Current 12 Months	Subsequent 24 Months	Current 12 Months	Subsequent 24 Months	Current 12 Months	Subsequent 24 Months	Current 12 Months	Subsequent 24 Months
Board of Directors	> \$ 500,000,000	> \$ 500,000,000	> \$ 1,000,000,000	> \$ 1,000,000,000	> \$ 500,000,000	> \$ 500,000,000	> \$ 500,000,000	> \$ 500,000,000	N/A	> \$ 100,000,000
President & CEO	<= \$ 500,000,000	<= \$ 500,000,000	<= \$ 1,000,000,000	<= \$ 1,000,000,000	<= \$ 500,000,000	<= \$ 500,000,000	<= \$ 500,000,000	<= \$ 500,000,000	N/A	<= \$ 100,000,000
Transaction Review Committee	> \$ 100,000,000	> \$ 100,000,000	> \$ 500,000,000	> \$ 500,000,000	> \$ 100,000,000	> \$ 100,000,000	> \$ 100,000,000	> \$ 100,000,000	> \$ 5,000	> \$ 10,000,000
BU President (Tom O'Connor)	<= \$ 100,000,000	<= \$ 100,000,000	<= \$ 500,000,000	<= \$ 500,000,000	<= \$ 100,000,000	<= \$ 100,000,000	<= \$ 100,000,000	<= \$ 100,000,000	<= \$ 5,000	<= \$ 10,000,000
Vice President, Commercial Asset Mgmt (Whitlock)	<= \$ 60,000,000	<= \$ 48,000,000	<= \$ 3,000	<= \$ 2,400	<= \$ 60,000,000	<= \$ 48,000,000	<= \$ 30,000,000	<= \$ 24,000,000	<= \$ 4,000	<= \$ 8,000,000
Staff Praban (Risk Management Head)	<= \$ 60,000,000	<= \$ 48,000,000	\$	\$	\$	\$	\$	\$	<= \$ 1,000	<= \$ 8,000,000
Bryan Gairrett (Term Trader)	<= \$ 60,000,000	<= \$ 48,000,000	\$	\$	\$	\$	\$	\$	<= \$ 250	<= \$ 3,000,000
Dave Jackson (Coal Risk Manager)	<= \$ 30,000,000	<= \$ 48,000,000	\$	\$	\$	\$	\$	\$	<= \$ 200,000	<= \$ 3,000,000
Ryan Gentili (Coal Risk Manager)	<= \$ 30,000,000	<= \$ 48,000,000	\$	\$	\$	\$	\$	\$	<= \$ 200,000	<= \$ 3,000,000
Mark Barta (Emission Allowance Manager)	<= \$ 30,000,000	<= \$ 48,000,000	\$	\$	\$	\$	\$	\$	<= \$ 200,000	<= \$ 3,000,000
Andy Tuschong (Real-time Risk Manager)	<= \$ 30,000,000	<= \$ 48,000,000	\$	\$	\$	\$	\$	\$	<= \$ 200,000	<= \$ 3,000,000
Don Hughes (Cash Risk Manager)	<= \$ 10,000,000	<= \$ 30,000,000	\$	\$	\$	\$	\$	\$	<= \$ 200,000	<= \$ 3,000,000
Alan Mok (PTR manager)	<= \$ 20,000,000	<= \$ 30,000,000	\$	\$	\$	\$	\$	\$	<= \$ 200,000	<= \$ 3,000,000
Greg Cecil (Real-time Operations Head)	<= \$ 5,000,000	<= \$ 5,000,000	\$	\$	\$	\$	\$	\$	<= \$ 200,000	<= \$ 3,000,000
Joe Belford (Real-time Trader)	<= \$ 5,000,000	<= \$ 5,000,000	\$	\$	\$	\$	\$	\$	<= \$ 200,000	<= \$ 3,000,000
Chris Cahill (Real-time Trader)	<= \$ 5,000,000	<= \$ 5,000,000	\$	\$	\$	\$	\$	\$	<= \$ 200,000	<= \$ 3,000,000
Gene Evans (Real-time Trader)	<= \$ 5,000,000	<= \$ 5,000,000	\$	\$	\$	\$	\$	\$	<= \$ 200,000	<= \$ 3,000,000
Chris Martin (Real-time Trader)	<= \$ 5,000,000	<= \$ 5,000,000	\$	\$	\$	\$	\$	\$	<= \$ 200,000	<= \$ 3,000,000
Lauren Matson (Real-time Trader)	<= \$ 5,000,000	<= \$ 5,000,000	\$	\$	\$	\$	\$	\$	<= \$ 200,000	<= \$ 3,000,000
Katie Hagedorn (Portfolio Analyst)	<= \$ 5,000,000	<= \$ 5,000,000	\$	\$	\$	\$	\$	\$	<= \$ 200,000	<= \$ 3,000,000
Uma Nanjundan (Gas Risk Manager)	<= \$ 5,000,000	<= \$ 5,000,000	\$	\$	\$	\$	\$	\$	<= \$ 200,000	<= \$ 3,000,000
Kevin Carter (Manager, Commodity Logistics)	<= \$ 10,000,000	<= \$ 10,000,000	\$	\$	\$	\$	\$	\$	<= \$ 200,000	<= \$ 3,000,000
Shannon Greenfield (Power Scheduler)	<= \$ 10,000,000	<= \$ 10,000,000	\$	\$	\$	\$	\$	\$	<= \$ 200,000	<= \$ 3,000,000
Amanda Jostworth (Power Scheduler)	<= \$ 10,000,000	<= \$ 10,000,000	\$	\$	\$	\$	\$	\$	<= \$ 200,000	<= \$ 3,000,000
Peggy Kreizer (Coal Scheduler)	<= \$ 10,000,000	<= \$ 10,000,000	\$	\$	\$	\$	\$	\$	<= \$ 200,000	<= \$ 3,000,000
John Kreihorst (Manager, Fuel Supply)	<= \$ 5,000,000	<= \$ 5,000,000	\$	\$	\$	\$	\$	\$	<= \$ 200,000	<= \$ 3,000,000

**GENERAL POLICIES:**  
 \* The Delegation of Authority matrix indicates the approval authority for any physical or financial specific transaction that a position title is allowed to execute.  
 \* Proper approval must be obtained PRIOR to executing any legally binding agreement (Refer to enforcement policy below).  
 \* Violation of limits stated above may result in disciplinary action (Refer to enforcement policy below).  
 \* It is a violation of the Energy Risk Management Policy to disaggregate deals to circumvent DOA limits (Refer to enforcement policy below).  
 \* Projects that require greater than Business Unit approval need to provide a White Paper, CRM Report, and Treasury Report when applicable to the Executive Committee.  
 \* Submissions on these requirements must be found in the Financial Analysis Manual, [http://www.dukeenergy.com/finance/itn](#)  
 \* All projects must be approved by the DEWA or the DEWA Executive Committee.  
 \* Termination of commodity contracts will be valued based on the net settlement dollar amount. Refer to the DEWA Executive DOA Capital Project column for approval limits.

**ENFORCEMENT POLICY:**  
 If the limits are exceeded and no PRE-APPROVAL documentation was presented, Middle Office will notify the commercial supervisor, head of trading and Trade Operations Compliance of the violation, regardless of the final resolution.

**NOTES:**  
 (A) The commercial supervisor do NOT have authority to exceed Trading and Marketing transactions.  
 (B) DOA limits which include trading activity but not tied to buy/sell, storage, hedging activity and financial contracts.  
 (C) "Current 12 months" and "Subsequent 24 Months" is based upon term of deal starting at the start month. No Authority to trade beyond 3 years without BU President approval.  
 (D) Index trades are measured on a volumetric level but should not exceed the Expanded Executive Committee Member dollar limit of \$500MM (based on forward markets). If a trade exceeds \$500MM, appropriate approval is required.

**Additional Notes:**  
 1) Fixed Price Includes fixed price contracts to buy/sell physical and financial commodities and measured against total notional dollar value.  
 2) Index / Cost Plus Includes indexed priced contracts (buy/sell physical commodities) and basis deals measured against total lots traded.  
 3) Full Requirements Includes transactions where variable or reliable energy schedules are sold to meet the needs of a load serving entity (including ancillary services or capacity if applicable).  
 4) Power/Storage Valued at Demand Fees (in term of contracts). If transaction is structured as an upfront payment, approval levels for "Capital Projects" will be used. Inventory for storage valued as a fixed price physical deal.  
 5) Other/Trade Includes all other trades that do not fit into the other categories.  
 6) Amendments If a contract is amended (and the original contract is not terminated), DOA on the deal should be measured on the appropriate new total volume/price.

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
 Tom O'Connor, Group Executive & President

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
 Steven Young, VP & Controller, Duke Energy

Delegation of Authority - Energy Commodity Trading						
Business Development						
Energy Management & Marketing - Contracts to Buy/Sell Commodities (Important - See Notes A, B and 6)						
Position Title	Full Requirements Contracts NOTIONAL DOLLAR VALUE (Note 3)		Transportation, Transmission, Storage, Capacity, Tolls or Heat Rate Options NOTIONAL DOLLAR VALUE (Note 4)		Option Contracts VOLUMETRIC LOTS and TOTAL DOLLAR VALUE OF PREMIUM (Note 5)	
	Current 12 Months (See Note C)	Subsequent 24 Months (See Note C)	Current 12 Months (See Note C)	Subsequent 24 Months (See Note C)	Current 12 months	Subsequent 24 Months
Board of Directors	> \$	500,000,000	> \$	500,000,000	N/A	=> \$ 100,000,000
President & CEO	<= \$	500,000,000	<= \$	500,000,000	N/A	< \$ 100,000,000
Transaction Review Committee	> \$	100,000,000	> \$	100,000,000	> 5000	> \$ 10,000,000
BU President (Tom O'Connor)	<= \$	100,000,000	<= \$	100,000,000	<= 5000	<= \$ 10,000,000
Vice President, Business Development (Phil Grigsby)	<= \$	60,000,000	<= \$	48,000,000	<= 4000	<= \$ 8,000,000
Renee Marko, Mark Wetzel	<= \$	40,000,000	<= \$	35,000,000	<= 800	<= \$ 4,000,000

**GENERAL POLICIES:**

- The Delegation of Authority matrix indicates the approval authority for any physical or financial specific transaction that a position title is allowed to execute
- Proper approval must be obtained PRIOR to executing any legally binding agreement (Refer to enforcement policy below)
- Violation of limits stated above may result in disciplinary action (Refer to enforcement policy below)
- It is a violation of the Energy Risk Management Policy to disaggregate deals to circumvent DOA limits (Refer to enforcement policy below)
- Projects that require greater than Business Unit approval need to provide a White Paper, CRM Report, and Treasury Report when applicable to the Executive Committee
- Guidelines on these requirements can be found in the Financial Analysis Manual at [http://corporatepolicies.duke-energy.com/finance/guidelines\\_financial\\_analysis\\_manual\\_120904.pdf](http://corporatepolicies.duke-energy.com/finance/guidelines_financial_analysis_manual_120904.pdf)
- For additional guidance, see the DEA Approval of Business Transactions Policy Statement available on the portal
- Termination of commodity contracts will be valued based on the net settlement dollar amount. Refer to the DEA Executive DOA Capital Project column for approval limits

**ENFORCEMENT POLICY:**

- If the limits are exceeded and no PRE-APPROVAL documentation was presented, the following groups will be notified the commercial supervisor, head of trading and Trade Operations Compliance of the violation, regardless of the final resolution.

**NOTES:**

(A) Non-commercial personnel do NOT have authority to execute Trading and Marketing transactions.

(B) DOA applies to each individual trading activity including but not limited to buy/sells, transportation, storage, hedging activity and financial contracts related to the following commodities: Natural Gas, Power, Coal, Emission Credits etc.

(C) "Current 12 months" and "Subsequent 24 Months" is based upon term of deal starting at the prompt month. No Authority to trade beyond 3 years without BU President approval.

(D) Index trades are measured on a volumetric level but should not exceed the Expanded Executive Committee Member dollar limit of \$500MM (based on forward markets), if a trade exceeds \$500MM, appropriate approval is required

**Additional Notes:**

- Fixed Price
- Index / Cost Plus
- Full Requirements
- Transport/Storage
- Options
- Amendments

Includes fixed price contracts to buy/sell physical and financial commodities and measured against total notional dollar value

Includes indexed priced contracts (buy/sell physical commodities) and basis deals measured against total lots traded

Includes transactions where variable or rateable energy schedules are sold to meet the needs of a load serving entity (including ancillary services or capacity if applicable).

Valued at Demand Fees for term of contract. If transaction is structured as an upfront payment, approval levels for "Capital Projects" will be used. Inventory for storage valued as a fixed price physical deal.

Measured based upon total lots and total dollar value of premium, whichever requires a higher level of approval

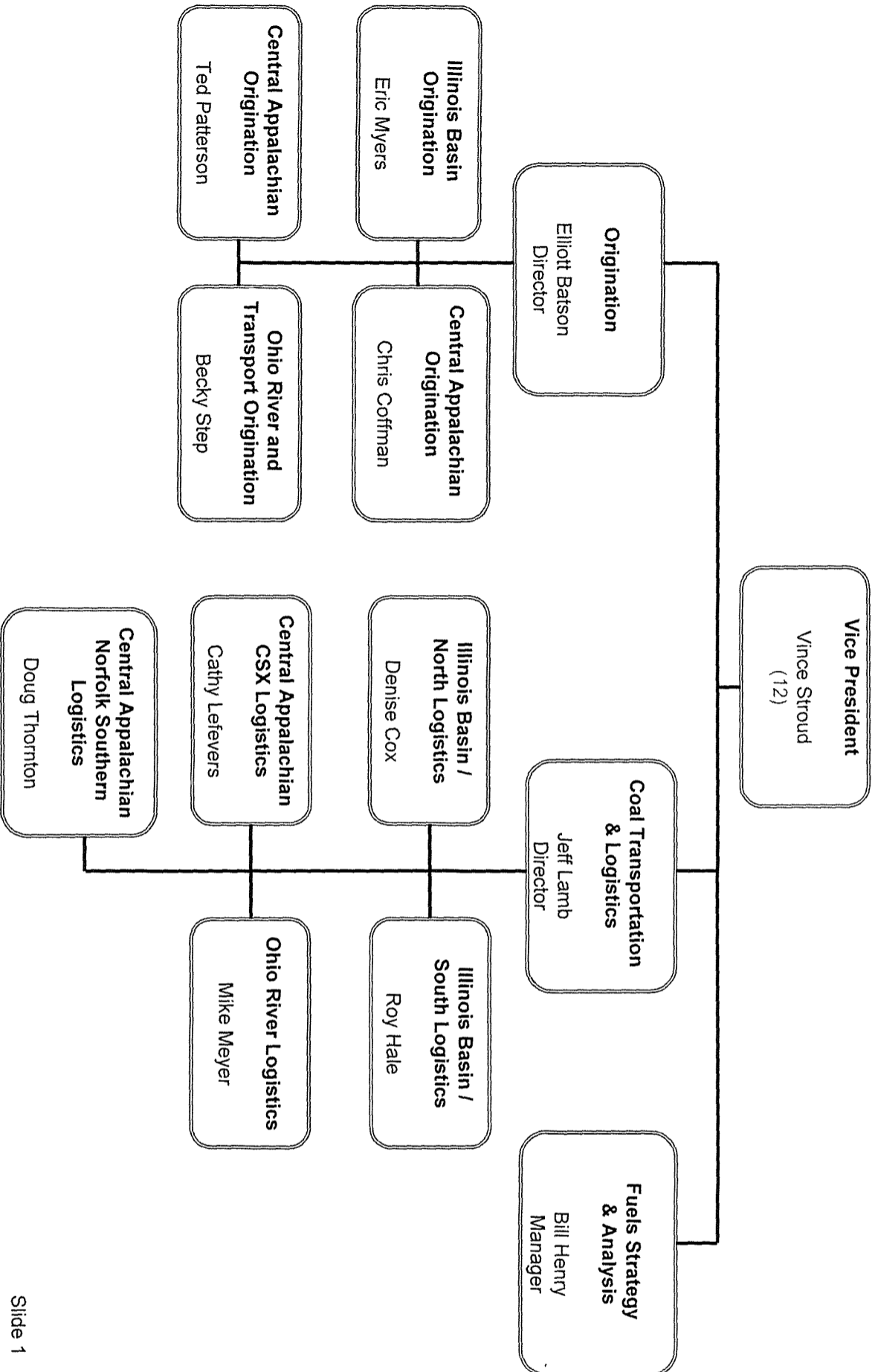
If a contract is amended (and the original contract is not terminated), DOA on the deal should be measured on the appropriate new total volume/value

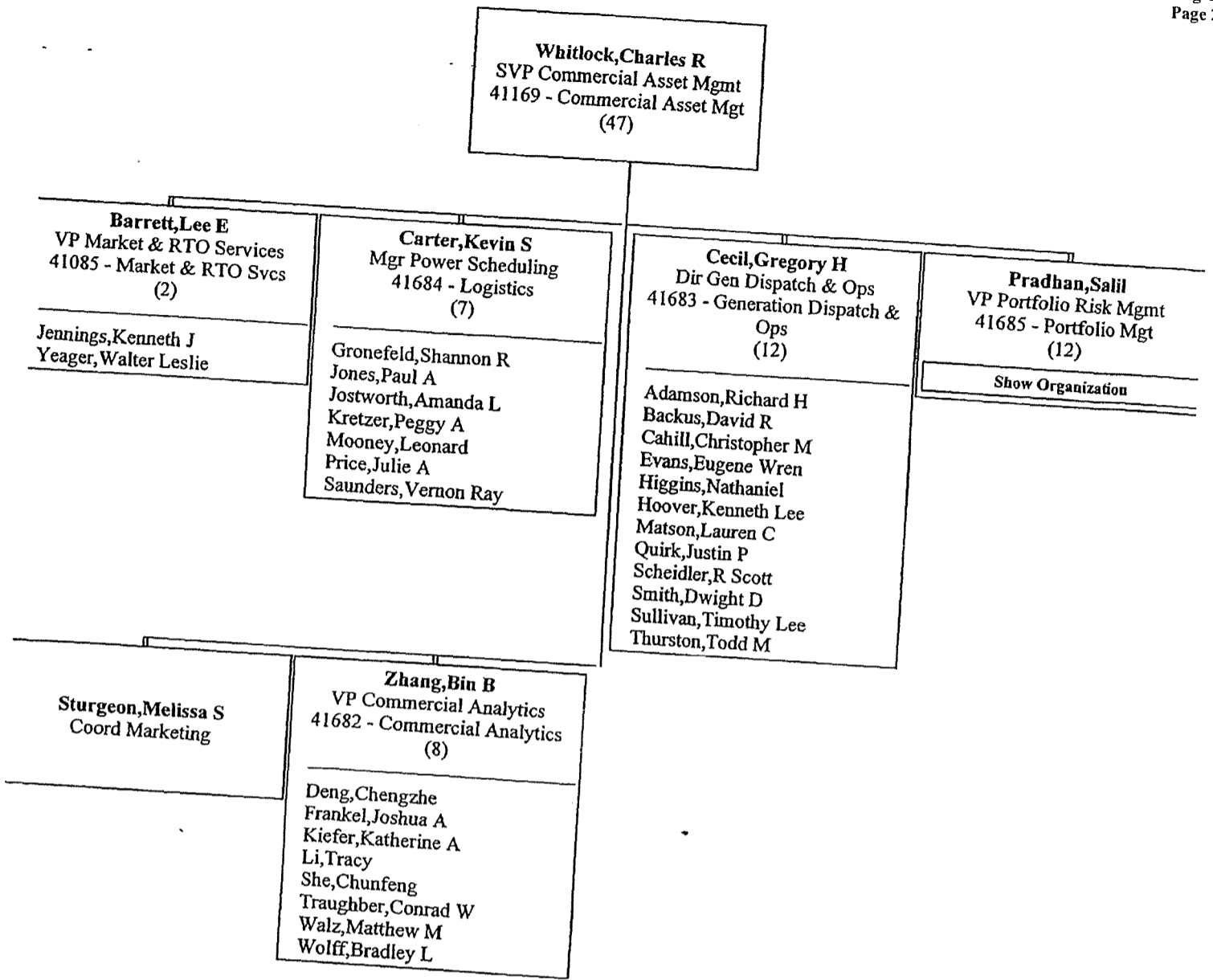
Approved: Tom O'Connor, Group Executive & President Date: \_\_\_\_\_

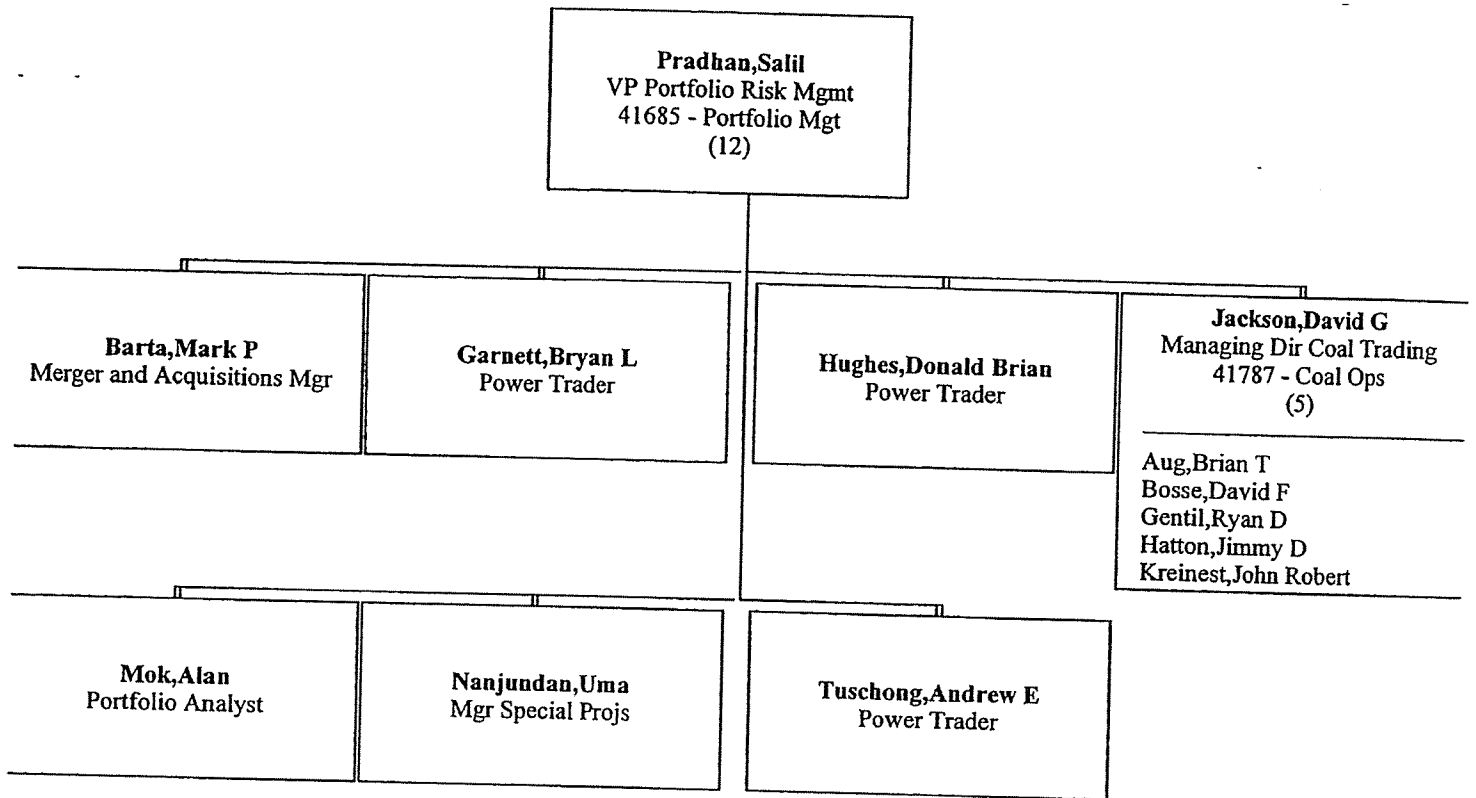
Approved: Steven Young, VP & Controller, Duke Energy Date: \_\_\_\_\_

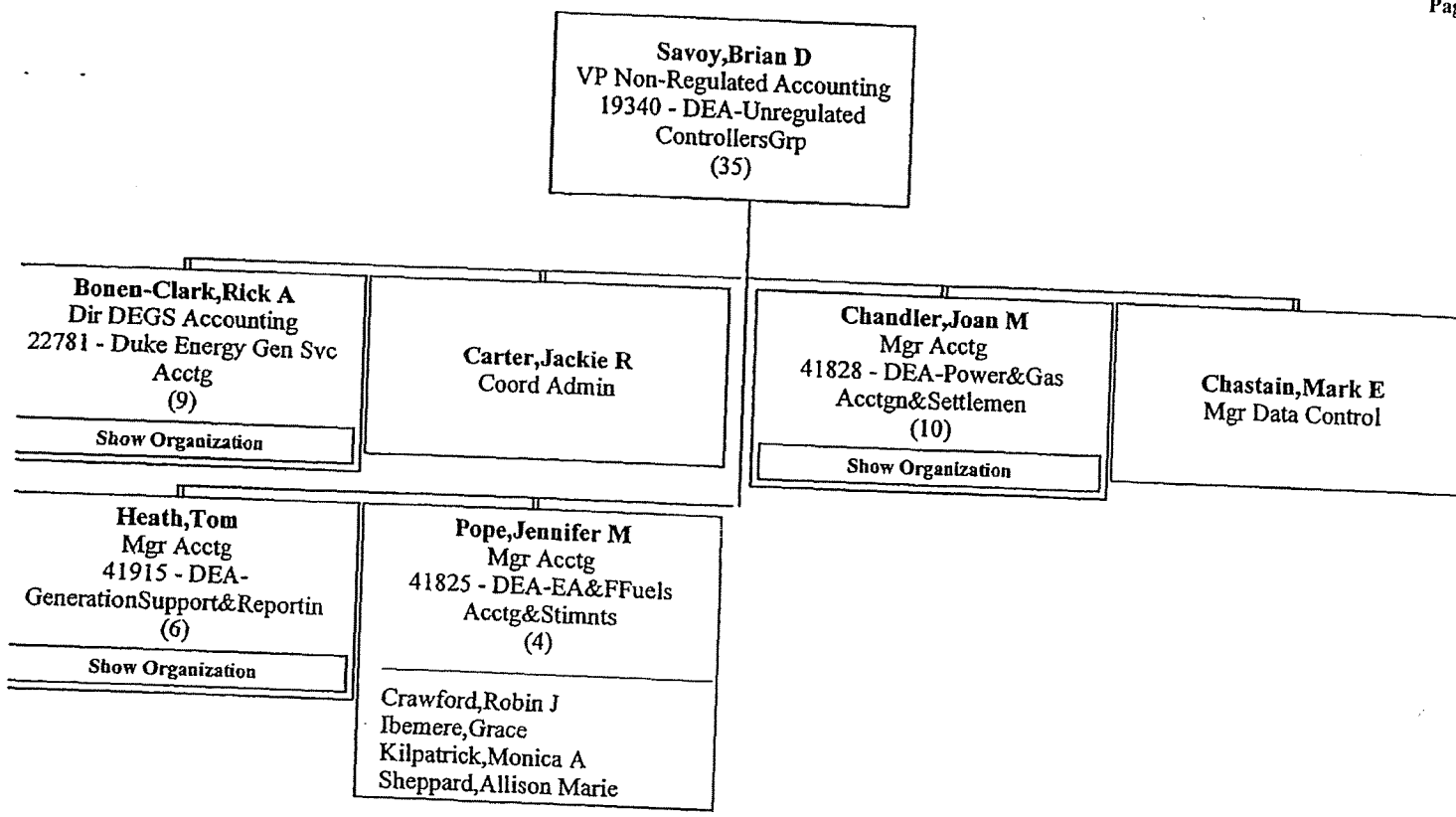


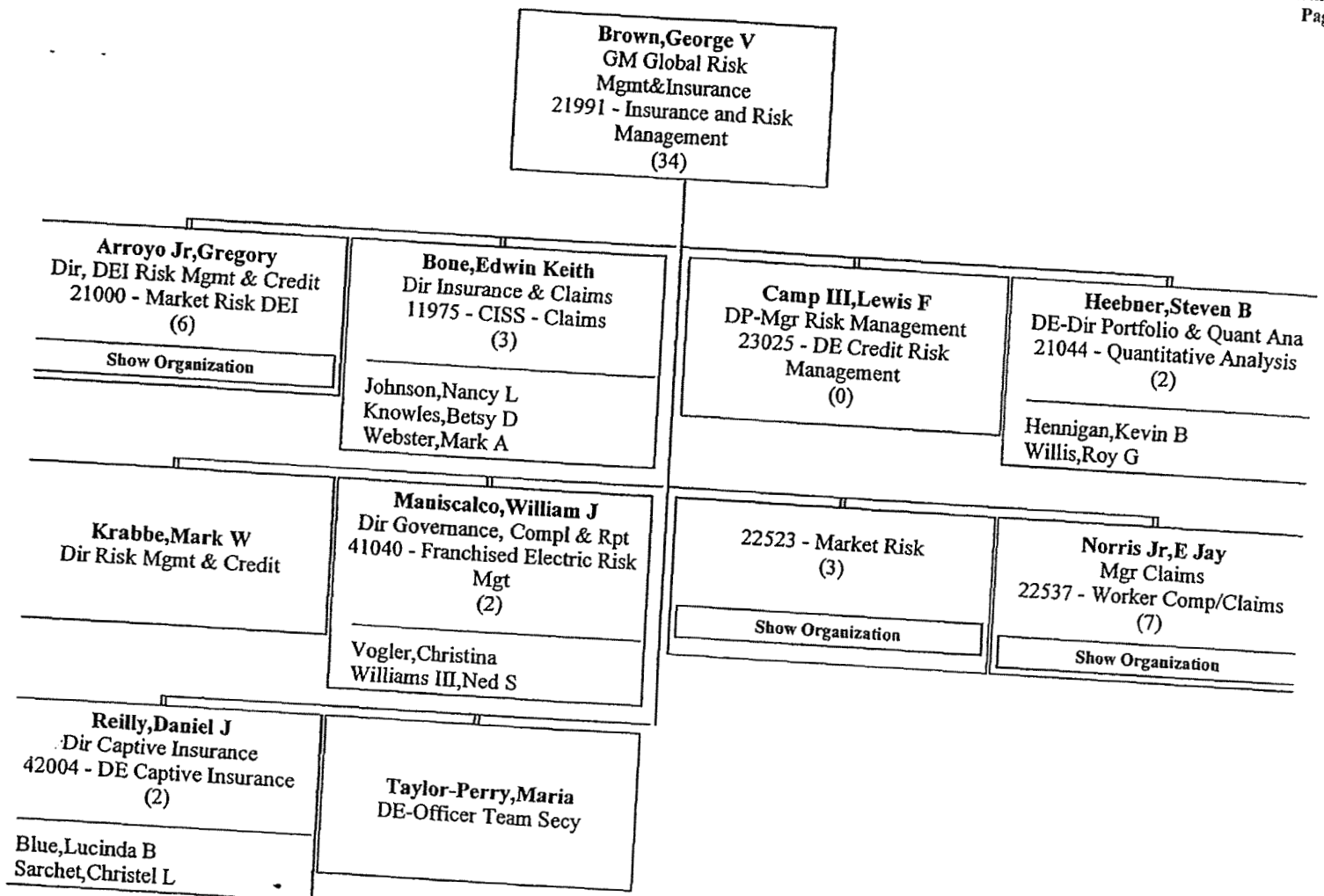
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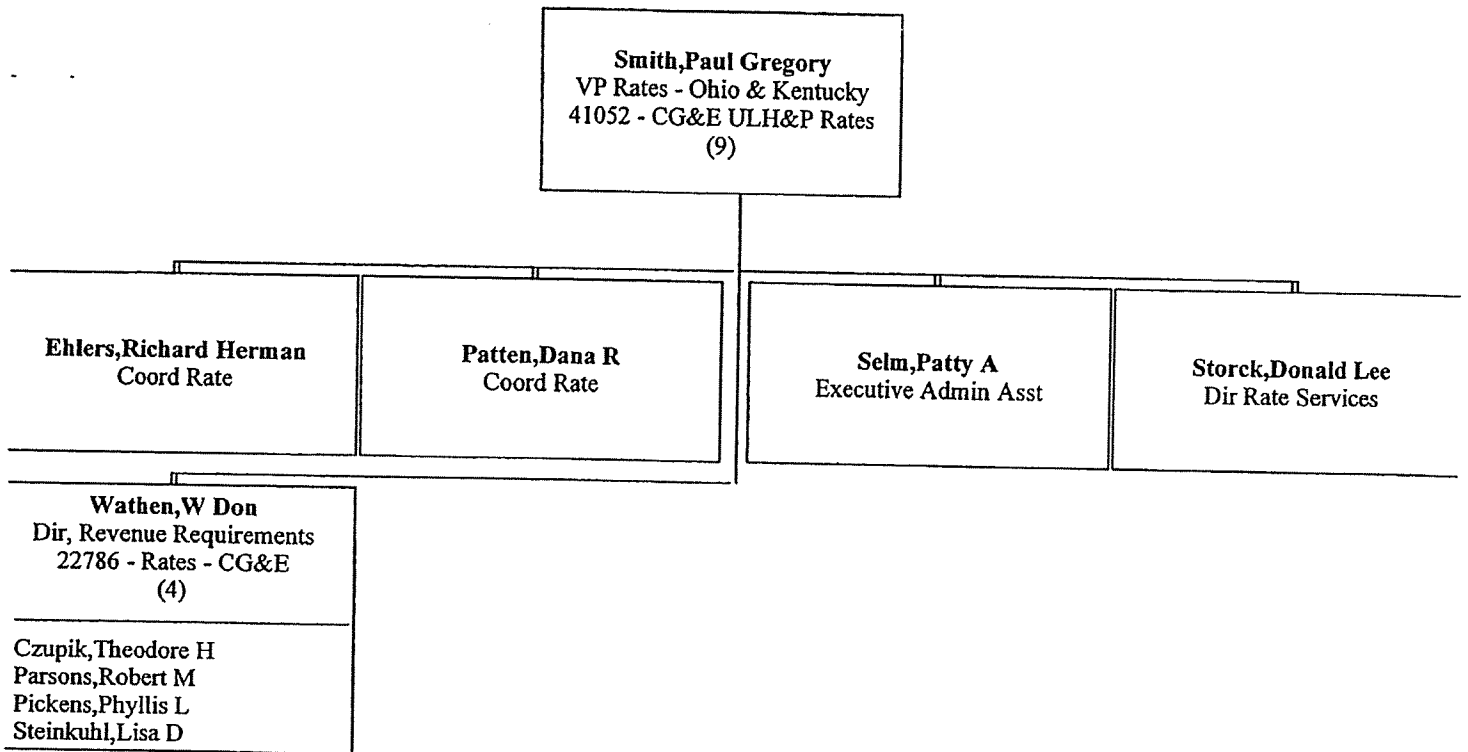




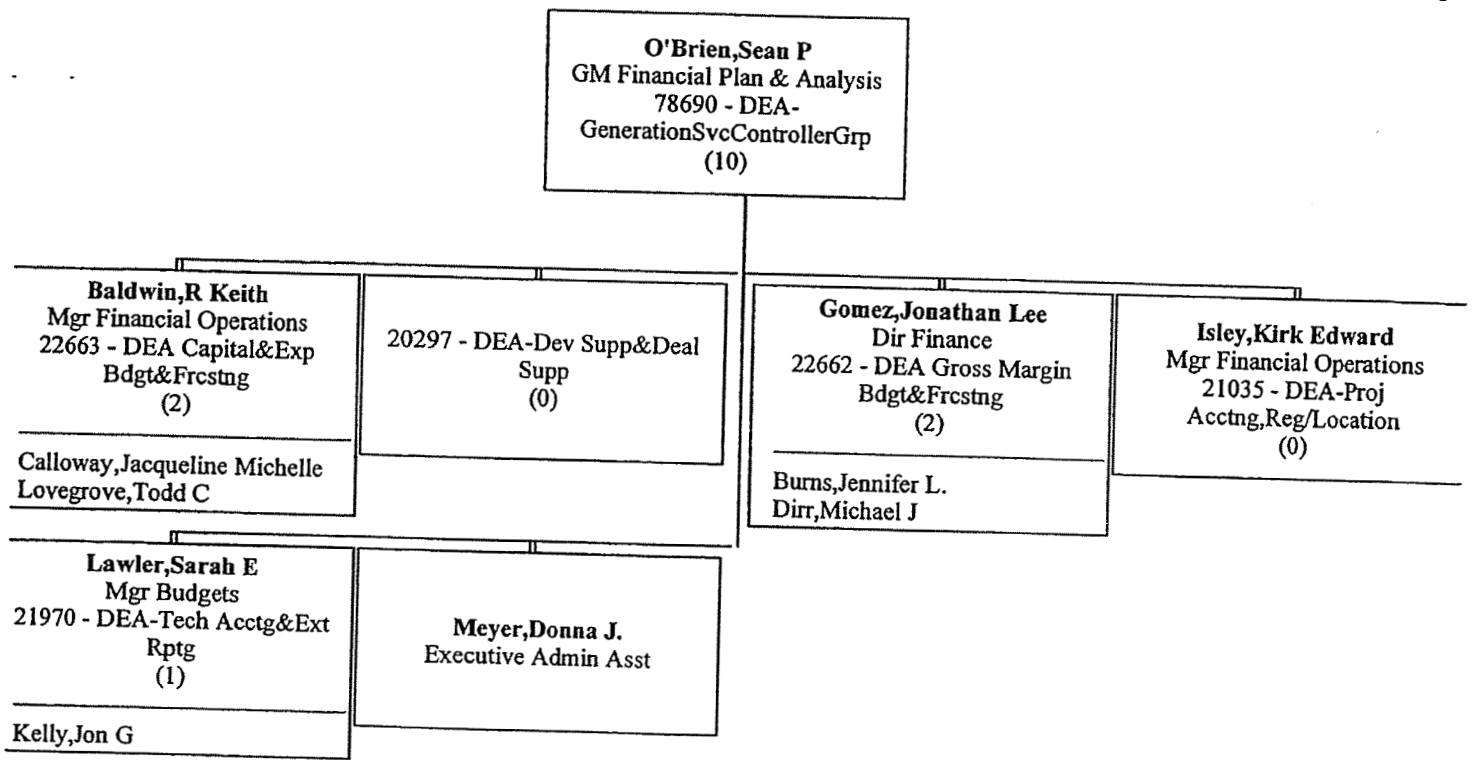












**KyPSC Staff Hearing Data Requests**  
**Duke Energy Kentucky Case No. 2007-00280**  
**Date Received: October 11, 2007**  
**Response Due Date: October 22, 2007**

**KyPSC-DR-HEARING-003**

**REQUEST:**

Referring to Data request No. 17, for East Bend, please provide for filing any executed contracts arising out of the solicitations listed in the company's initial response filed on August 24, 2007. If these contracts have not yet been executed, please state such and provide copies as soon as they are executed. Also, provide a copy of the contract that was terminated after the test burn in the spring of 2007 because the coal did not meet our quality requirements.

**RESPONSE:**

None.

**PERSON RESPONSIBLE:** Elliott Baston

**KyPSC Staff Hearing Data Requests**  
**Duke Energy Kentucky Case No. 2007-00280**  
**Date Received: October 11, 2007**  
**Response Due Date: October 22, 2007**

**KyPSC-DR-HEARING-004**

**REQUEST:**

Please identify the vendor which Duke Energy Kentucky purchased power while East bend experienced an outage from March 30, 2007 through May 31, 2007.

**RESPONSE:**

In an Order dated March 29, 2007 in Case No. 2007-00044, the Commission approved a back-up supply plan for Duke Energy Kentucky, Inc. ("DE-Kentucky"). The back-up supply plan provided for DE-Kentucky to obtain back-up power for scheduled outages by using fixed forward financial swaps from the IntercontinentalExchange ("ICE"), a commodity/financial product market. This type of contract allows DE-Kentucky to lock-in a fixed forward price for power. This is a financial product, not a contract for physical delivery of power. DE-Kentucky actually obtained its physical back-up power from MISO daily energy purchases. The financial contract is settled through Prudential Financial, DE-Kentucky's clearing firm with the ICE and Prudential Financial is identified as the counterparty.

In addition to long-term forward financial swaps, DE-Kentucky used short-term financial swaps to balance generation/load and adjust monthly forward hedges to better reduce portfolio exposure to volatile spot power market. Most of these transactions took place on the ICE with Prudential Financial as the counterparty. As DE-Kentucky gradually set up contract agreements with financial market participants in the MISO area, a number of short-term hedge transactions were done directly with Dayton Power & Light, Constellation Energy Commodities Group and Cargill Power Markets in this period.

MISO virtual transactions were also used in some cases to hedge real-time forced outages. These transactions were done directly with MISO.

**PERSON RESPONSIBLE:** William Don Wathen

**KyPSC Staff Hearing Data Requests  
Duke Energy Kentucky Case No. 2007-00280  
Date Received: October 19, 2007  
Response Due Date: November 8, 2007**

**KyPSC-DR-HEARING-005**

**REQUEST:**

Provide a copy of the Williamson Energy / DEK coal contract that was terminated in March, 2007.

**RESPONSE:**

The master contract and confirmation are provided at Attachment KyPSC-DR-Hearing-005(a). The letter of termination is provided at Attachment KyPSC-DR-Hearing-005(b).

**PERSON RESPONSIBLE:** Elliott Batson

## MASTER COAL PURCHASE AND SALE AGREEMENT

This **Master Coal Purchase and Sale Agreement** ("Master Agreement") is entered into this day of 5-4-06, (the "Effective Date") by and between **The Union Light, Heat and Power Company d/b/a Duke Energy Kentucky, Inc.** ("**Duke Energy Kentucky**") and **Williamson Energy, LLC** ("**Williamson**"). UHL&P and Williamson (each a "Party" and collectively, the "Parties") may, but shall not be required to, enter into Transactions which will be governed by this Master Agreement. Any capitalized term used herein and not defined in the Article in which it appears shall have the meaning set forth in Article 11 hereof. **Duke Energy Kentucky** and **Williamson** hereby agree as follows:

### Article 1: Transactions

**1.1. Procedures.** A Transaction shall be entered into by means of an offer to buy or sell Coal or to buy or sell an Option by either Party to the other Party (through their respective agents and/or representatives) in writing. Any such Transaction shall be evidenced by an executed Confirmation (as hereinafter defined) as provided herein. Facsimile signatures by the appropriate authorities shall be considered as original signatures for all purposes under this Master Agreement.

#### **1.2 Confirmations.**

(a) The selling party ("Transaction Seller") will execute and send via facsimile to the buying party ("Transaction Buyer"), promptly after agreement as to a Transaction, a written confirmation memorializing the Transaction ("Confirmation"), which is substantially in the form attached hereto as Exhibit A-1. Each Confirmation will be promptly executed by the Transaction Buyer, if it accurately sets forth the terms and conditions of the Transaction agreed by the Parties, and returned to the Transaction Seller within three (3) Business Days of receipt. Each Confirmation will list the terms and conditions for the agreed Transaction not otherwise covered by this Master Agreement, including, without limitation, Transaction Buyer and Transaction Seller, Transaction Quantity, Term, Nomination Period(s), Scheduling, Transaction Price, Source(s), Delivery Point(s), Loading Capacities, Specifications, Periodic Performance Qualities (set forth in Schedule 2 of Exhibit A-1), Rejection Limits, premiums and/or penalties, and, if the Transaction includes an Option, Option Quantity, Exercise Date(s), Strike Price(s) and any other relevant terms agreed to by the Parties to the Transaction, including any exceptions to the Master Agreement. Should Transaction Seller fail to issue a Confirmation within three (3) Business Days after agreement to a Transaction or within such other time as agreed upon by the Parties, then the Transaction Buyer may issue a Confirmation which will evidence the Transaction. Such Confirmation shall nevertheless become enforceable only when fully executed by the Parties.

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(b) Except as otherwise provided in this Master Agreement, in the event of any inconsistency between the provisions of this Master Agreement and the terms set forth in a Confirmation, such Confirmation will prevail for the purpose of the relevant Transaction.

(c) Each Confirmation shall supplement and form a part of this Master Agreement and shall be read and construed together with this Master Agreement and all other applicable Annexes and Exhibits, which constitute a single integrated agreement between the Parties, and all the Transactions contemplated in Confirmations shall be integral parts of this Master Agreement. All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the Parties.

**1.3 Representations.** On the Effective Date hereof and on the Trade Date of each Transaction, each Party represents and warrants to the other that:

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

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

(c) It has any and all necessary governmental and other third party permits, approvals and licenses required in connection with the execution, delivery and performance of this Master Agreement and any Transaction; and

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

(e) There are no Legal Proceedings pending or, to its knowledge, threatened against it or any of its Affiliates that are likely to affect the legality, validity, enforceability or its ability to perform its obligations under this Master Agreement and each Transaction.

#### **Article 2: Term**

The term of this Master Agreement (the "Master Agreement Term") shall commence on the Effective Date and shall remain in effect until terminated by either Party upon thirty (30) days prior written notice; provided, however, that such termination shall not affect or

excuse the performance of any Party under any provision of this Master Agreement that by its terms survives any such termination, and this Master Agreement and any relevant Confirmations shall remain in effect with respect to any Transaction(s) entered into on or prior to the date of the termination until each Party has fulfilled all of its obligations with respect to all such Transaction(s).

### **Article 3: Obligations**

**3.1 Obligations for Purchase and Sale of Coal.** During the Term of each Transaction, Seller agrees to sell and deliver to the Buyer, and Buyer agrees to purchase, accept and pay for from Seller, the Contract Quantity of Coal to be delivered at the Delivery Point as provided for in the relevant Confirmation.

**3.2 Scheduling.** Except as otherwise provided in the relevant Confirmation, Buyer will advise Seller on or before the 15<sup>th</sup> day of each calendar month preceding scheduled shipments of the number of unit trains, trucks or barges it desires to load during the succeeding month to fulfill the Transaction quantity and Buyer's desired loading dates and delivery schedule ("Delivery Schedule"). Seller will advise Buyer on or before the 25<sup>th</sup> day of the month preceding shipment of its Source mine(s)/loadout(s) for the scheduled monthly shipment(s). The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule within the Nomination Period and within each month during the Nomination Period. Unless otherwise specifically set forth in the relevant Confirmation, all deliveries will occur in approximate ratable amounts over the Term of a Transaction. The Parties further agree that the Delivery Schedule shall take into account scheduled mine vacation periods and longwall moves and planned plant outages.

### **3.3 Delivery.**

**(a) Barge or vessel deliveries.** For barge or vessel deliveries, the Coal shall be delivered to Buyer FOB barge or vessel at the Delivery Point. Title to and risk of loss of the Coal will pass to Buyer upon each barge or vessel being fully loaded and trimmed. Buyer, by itself or through its Transporter, shall furnish suitable barges or vessels for delivery of the Coal. Such barges or vessels shall be compatible with the Source's coal loading facilities to be utilized by Seller and shall be properly prepared to receive coal. Coal haulage or transportation equipment provided by either Seller or Buyer, as the case may be, shall be clean, dry and suitable for the transportation of coal and shall be provided in a timely fashion in order to comply with the delivery schedule. Seller shall arrange for and pay all costs of transporting the Coal to the Delivery Point and handling and loading the Coal into barges or vessels to the proper draft and proper distribution in such barges or vessels provided that Seller shall not be obligated to load any barge which it deems not to be clean and seaworthy.

Buyer shall arrange for and pay all costs for transporting the Coal by barge or vessel from and after the Delivery Point to its destination. If the Delivery Point at a Source is such that the Coal will have been transported by barge or vessel prior to delivery, then title to and risk of loss of the Coal will pass to Buyer upon the earlier to occur of (i) the safe and proper mooring of the barge(s) or vessel(s) at the Delivery Point loading dock or discharge point or (ii) other transfer of the custody and control of the barge(s) or vessel(s) to Buyer or Buyer's Transporter.

**(b) Rail or truck deliveries.** Unless otherwise specifically provided in the Confirmation, for rail or truck deliveries, the Coal shall be delivered to Buyer FOB Unit Train(s) or FOB truck(s) at the Delivery Point. For truck deliveries, title to and risk of loss of the Coal will pass to Buyer as each truck is loaded or unloaded, as appropriate. For rail deliveries, title to and risk of loss of the Coal will pass to Buyer upon completion of loading all railcars in each Unit Train and release of the Unit Train to the railroad. Buyer shall furnish suitable Unit Trains or trucks for loading and delivery of the Coal. Such Unit Trains or trucks shall be compatible with the coal loading facilities utilized by the Seller and shall be properly prepared to receive coal and shall be provided in a timely fashion in order to comply with the delivery schedule. Coal haulage or transportation equipment provided by either Seller or Buyer, as the case may be, shall be clean, dry and suitable for the transportation of coal. If the Delivery Point is at a Source such that the Coal will have been transported by Unit Train or truck prior to delivery, then title to and risk of loss of the Coal will pass to Buyer upon the earlier to occur of (i) the safe and proper placement of the Unit Trains or trucks at the Delivery Point or (ii) other transfer of the custody and control of the Unit Trains or trucks to Buyer or Buyer's Transporter.

**(c) Shipping notices.** For each delivery by vessel, barge, truck, or rail, Seller shall supply Buyer with a shipping notice which shall include the vessel name, train or barge or truck number, Source from which supplied, tonnage shipped, shipping date, destination, along with the analysis information required under Article 4 and any other information reasonably required by Buyer and agreed to by Seller. Seller shall within two (2) Business Days of loading or prior to arrival of the vessel, barge, truck or train (as applicable) at the destination following loading of such shipment (whichever comes first), send the shipping notice to Buyer by telecopy or other means as agreed to between Buyer and Seller. Notwithstanding the obligations to send shipping notices as provided in the previous sentence, Seller agrees to use Commercially Reasonable Efforts to send any such notices. Seller shall also provide Buyer Bill of Lading for each delivery which shall include name of Seller, contract number or purchase order number, train, truck or barge number, date loaded and Seller's delivered weights. Seller shall, as soon as is reasonably possible, notify Buyer of

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any loading deficiencies or delays in loading via telephone or other electronic means.

**(d) Transportation Charges.** If a Party involved in a Transaction is charged for any increased transportation charges, penalties or other costs, including demurrage, attributable to the other Party's failure to timely and appropriately load or unload the Coal in accordance with the terms of the Transaction or the timing and tonnage requirements of the Transportation Specification, and if such failure is not due to Force Majeure, failure of the other Party or the other Party's railcars or transportation carrier, such failing Party shall promptly reimburse the other for such actual charges, if such charges are usual and customary, after written notice thereof. Upon request by either Buyer or Seller, such Transportation Specifications shall be made available for review by the requesting Party, provided that the disclosing Party shall not be required to disclose pricing information. The requesting Party shall sign an appropriate Confidentiality Agreement if requested by the disclosing Party.

**(e) Freeze Conditioning.** Seller shall, if it reasonably can, treat the Coal with freeze control agents or other additives as directed by Buyer. Buyer shall thereafter reimburse Seller for the actual cost of materials, including reasonable application costs as charged by the Source mine for application of the freeze control agents, or other additives. Seller shall invoice Buyer and Buyer shall pay Seller for such freeze conditioning in accordance with the provisions of Article 6.1 hereof.

**(f) Reconsignment and Resale Rights.** Buyer shall have the right, at its sole option, to reconsign or resell all or any part of the Coal delivered hereunder. Should Buyer exercise its right to reconsign or resell Coal, Seller shall use commercially reasonable efforts in cooperation with Buyer to arrange for transportation to the destination designated by Buyer if other than the Delivery Point. Buyer shall be responsible for all additional costs incurred by Seller to deliver such reconsigned or resold Coal to a delivery point other than the Delivery Point.

**(g) Buyer's Administrative Obligation.** The Parties agree that some of Buyer's obligations hereunder may be performed by Buyer's Customer; nevertheless, Buyer shall remain liable for all of Buyer's obligations hereunder and Buyer shall indemnify and hold Seller harmless from and against any and all claims made by Buyer's Customer against Seller. Buyer agrees to the following:

**(i)** Buyer shall inform Seller at least twenty-four (24) hours in advance of arrival of each Unit Train, truck, barge or vessel at the Source's mine/loadout of the identification number of the Unit Train truck, barge or vessel,

identification of Buyer's Customer, and destination of such Unit Train truck, barge or vessel.

(ii) The loading of such Unit Train shall be in accordance with the loading provisions provided to Seller herein unless Buyer notified Seller in advance of different loading provisions and such different loading provisions are in general accordance with general operating parameters in the mine's/loadout's region, and do not, in Seller's reasonable opinion, impose an undue operating or economic burden on Seller.

(iii) All information to be supplied by Seller to Buyer under this Master Agreement including but not limited to analysis, weights, train manifest and invoicing information shall be supplied to Buyer and Buyer shall be responsible for transmitting such information to Buyer's Customer.

**3.4 Title and Indemnity.** Seller warrants that at the time of delivery it will have title to the Coal, and will deliver the Coal to Buyer, free and clear of all liens, claims and encumbrances arising prior to the transfer of title to Buyer. Seller and Buyer shall each indemnify, defend and hold harmless the other Party from any Claims arising from failure of title or loss of the Coal while title to and risk of loss of the Coal is vested in the indemnifying Party.

**3.5 Legislation.** In the event of the enactment, modification, or revision, to include a change due to judicial or administrative interpretation, of any federal, state or local legislation, regulations, rules, or mandates issued pursuant thereto, including but not limited to the Federal Mine Safety Health Act of 1977 and the Surface Mining Control and Reclamation Act of 1977, (a "Change in Law") on or after the Trade Date of the relevant Transaction, with respect to, by way of example, but not limited to, taxes other than income taxes; reclamation; conservation; mine safety; mine working conditions and practices; ventilation; health and health care; occupational hazards; reclamation, and conservation of mined areas; which increases or decreases Seller's cost to mine or deliver Coal from the Source, an appropriate adjustment will be made to the Contract Price paid by Buyer to reflect such changed cost. Additionally, such change in cost shall be determined by the difference in the new cost and the cost in effect on the Trade Date of the relevant Transaction.

In the event that any price adjustment exceeds the then current Contract Price by more than ten percent (10%), or should the cumulative total of all such adjustments under this Section exceed ten percent (10%) of the Contract Price in effect as of the Trade Date of the subject Transaction, Buyer shall have the right, but not the obligation, to terminate the subject Transaction. Should Buyer terminate the subject Transaction as provided in the prior sentence, Seller may nullify such termination by giving written notice to Buyer within seven (7) calendar days after receiving Buyer's notice of such termination that Seller waives its rights to the amount of any increase above ten percent (10%) of the then

current Contract Price or that exceeds ten percent (10%) of the Contract Price in effect as of the Trade Date of the subject Transaction. In the event Seller does not waive its rights to the amount of any increase, and the Buyer elects to terminate, the Agreement shall continue in full force and effect for sixty (60) days from date of notice of termination at the then current contract price, and any increase as a result of legislation, and shall then terminate upon the completion of the sixty (60) day period, unless terminated sooner by Buyer.

**3.6 Taxes and Other Liabilities.** Each Party shall use Commercially Reasonable Efforts to administer this Agreement and implement the provisions in accordance with the intent to minimize Taxes within the good faith parameters of the law. Seller shall be solely responsible as to any Transaction for all assessments, fees, costs, expenses and taxes except for New Taxes imposed by governmental authorities or other third parties ("Third Party Impositions") relating to the mining, beneficiation, production, sale, use, loading and delivery of Coal to Buyer or in any way accrued or levied prior to the transfer of title to the Coal to Buyer, and including, without limitation, all severance taxes, royalties, black lung fees, reclamation fees and other costs, charges and liabilities. Buyer shall be solely responsible as to any Transaction for Third Party Impositions relating to the Coal accrued or levied at or after the transfer of title to the Coal to Buyer, including, but not limited to, sales or use tax if applicable. If either Party is exempt from taxes, it shall provide a certificate of exemption or other reasonably satisfactory evidence of such exemption. The amount of any New Taxes shall be borne by the Buyer unless otherwise provided in the applicable Confirmation, provided however that if such New Tax exceeds the then current Contract Price by more than ten percent (10%), or should the cumulative total of all such adjustments under this Section 3.6 exceeds ten percent (10%) of the Contract Price in effect as of the Trade Date of the subject Transaction, Buyer shall have the right but not the obligation to terminate any Transaction affected by a New Tax. Seller may nullify such termination by giving written notice to Buyer within seven (7) calendar days after receiving Buyer's notice of such termination that Seller waives its right to the amount of any increase above ten percent (10%) of the then current contract price or that exceed ten percent (10%) of the Contract Price in effect as of the Trade Date of the subject Transaction. Each Party shall use reasonable efforts to obtain and cooperate with the attempts by any other Party to obtain any pass through, exemption from or reduction of any Tax. Each Party shall indemnify, release, defend and hold harmless the other Party from and against any and all Third Party Impositions with respect to the Coal that are the responsibility of such Party pursuant to this Section 3.6.

**3.7 Option Exercise.** Unless otherwise expressly provided in the relevant Confirmation for an Option, in order to exercise the Option, the buyer of the Option ("Option Buyer") will, no later than 5:00 p.m. Eastern Prevailing Time on the Exercise Date for an Option, notify the seller of the Option ("Option Seller") either verbally or in writing, which notice will be irrevocable ("Notice of Exercise"), of the Option Buyer's exercise of its right or rights granted pursuant to the relevant Option. The Option Buyer may exercise the right or rights granted pursuant to the Option only by timely giving a Notice of Exercise to the Option Seller. If the Option is not timely exercised, it will

expire and neither the Option Buyer nor the Option Seller will have any further rights or liabilities with respect to that Option. Once an Option under a Transaction has been timely and properly exercised, the physical purchase and sale of the Coal related thereto shall be governed by the terms of this Master Agreement and the relevant Confirmation, and the terms "Buyer" and "Seller" as used in this Master Agreement shall refer to the physical buyer and seller of the Coal, respectively, and not to the Option Buyer and Option Seller. Notice to Option Buyer or Option Seller, as the case may be, shall constitute notice to Buyer or Seller.

**Article 4: Specifications, Weighing, Sampling and Analysis**

**4.1 Specifications.** Seller shall cause all Coal delivered to Buyer pursuant to any Transaction to comply with the Specifications set forth in the relevant Confirmation.

**4.2 Unit Train or Truck Weighing.** Unless otherwise agreed by the Parties in the relevant Confirmation, Shipments delivered into Unit Trains or trucks shall be weighed at Seller's expense by means of a certified batch weighing system or certified track or truck scale or in the absence of a batch weighing system or track scales for rail weights, official railroad weights. The weights determined thereby (absent manifest error) will be the basis on which invoices will be rendered and payments made hereunder.

*Seller cert*

(a) Seller shall cause the Source to test, calibrate, and certify its scales at the Source approximately every twelve (12) months to maintain them at a scale accuracy in accordance with the guidelines outlined in the National Bureau of Standards Handbook #44. Seller shall use Commercially Reasonable Efforts to notify Buyer as soon as it knows the date and time for such testing and calibration, and Buyer shall have the right, but not the duty, to witness such testing, calibration, and certification of Seller's scales.

(b) If the scales at the Source are determined to be inoperative, or if the Source is a Western Mine, then the weight of such coal delivered shall be determined by averaging the lading weight per railcar of the last five (5) trains of like equipment under this Agreement weighed at the Source prior to such breakdown. If less than five (5) trains of like equipment under this Agreement were weighed at the Source prior to the breakdown, the weight per railcar shall be determined by averaging the weight per railcar of the train(s) of like equipment under this Agreement weighed at the Source prior to the breakdown as well as the lading weight per railcar of train(s) of like equipment under this Master Agreement first weighed at the Source after the scales are operable, so as to comprise a five (5) train weighted average. If the Source is an Eastern Mine, the weight of such coal delivered shall be determined by railroad weights.

(c) Buyer shall have the right to have a representative present at its own risk and expense at any and all times to observe weighing of the coal. If

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either Party should at any time question the accuracy of the scales at the Source, such Party may request a prompt test and adjustment of such track scales or batch weighing system at its expense by an entity mutually agreed upon by Buyer and Seller.

**4.3 Barge and Vessel Weighing.** Unless otherwise agreed by the Parties in the relevant Confirmation, Shipments delivered by barge(s) or vessel(s) shall be weighed at Seller's expense as determined by a certified belt scale (such certification to be not older than six (6) months from the date of loading, and certification to be completed using procedures established in the National Institute of Standards and Technology Handbook 44 ("NIST") ("Scale Test") or if not available by draft survey taken at the Delivery Point prior to the departure of the barge(s) or vessel(s) from the Delivery Point at Seller's expense. The weights thereby determined (absent manifest error) will be the basis on which invoices will be rendered and payments made hereunder. All such draft surveys at the Delivery Point shall be conducted by a mutually agreeable independent surveyor (certified commercial marine surveyor for vessels) experienced in the conduct of draft surveys selected the Parties.

*Seller*

**4.4 Sampling and Analysis.**

(a) The Sampling Person, which shall be Seller, the Source or the Source's agent unless otherwise specified in the relevant Confirmation, shall cause a representative coal sample to be taken by mechanical sampler that is in control, as defined by the Sampling Ratio Control Chart in Appendix X1 of ASTM D2234 and that has been bias tested as it is used to load coal by the Paired Test Batch Design Method in ASTM D6518 within twelve (12) months prior to delivery by an independent mutually agreed to third party experienced in bias testing. The reference samples shall be stopped belt samples taken from the load-out feed belt, or equivalent and a batch shall be defined as the coal required to load a single train, unless the definition of a batch is otherwise mutually agreed in writing between the Parties. Each such stopped-belt sample shall be air dried prior to being crushed and reduced in size and each shall be analyzed separately in accordance with the referee method in ASTM D3302. Any bias that is detected shall be used to adjust the analyses. The paired data sets will be evaluated using a two tailed student's t-test at the 99% confidence level. A statistically significant bias is present for a parameter if the confidence interval of the parameter as defined by the upper and lower confidence limits does not include zero. The point estimate of the bias is the average of the differences between the reference samples and the product of the mechanical sampling system being tested. If non-biased tested equipment is specifically authorized in a Confirmation, and in such event the Sampling Person is not able to obtain a sample with biased tested equipment in proper working condition, the Parties shall confer for purposes or reaching agreement as to an alternative means of sampling. Samples shall be taken on an "as-loaded" basis, and analyzed on an "as-

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received" basis and all sampling, sample preparation and analysis shall be performed in accordance with then current published applicable ASTM standards.

(b) Analysis shall be performed by the Analysis Person which shall be an independent certified laboratory chosen by good faith agreement of the Parties. If the Parties fail to agree upon such laboratory, then each Party shall select its own independent certified laboratory and the analyses of both laboratories of the Sampling Person's samples shall be averaged and such average shall be conclusive and binding for all purposes, provided that the results obtained by the individual laboratories are within ASTM (interlaboratory) Reproducibility Limits; if the results are not within ASTM (interlaboratory) Reproducibility Limits, the analyses of such Samples by the independent laboratories shall be repeated. Samples shall be analyzed on an "as-received" basis in accordance with then current published applicable ASTM standards.

(c) The Sampling Person's samples of Coal representing each Shipment and the analysis thereof as set forth above, shall be used to determine quality adjustments pursuant to Article 5.1 and any rejection or suspension rights pursuant to Article 5.2 or 5.3. Each sample shall be divided into four (4) parts in accordance with then current ASTM standards and placed in separate airtight containers. One (1) part of each sample will be analyzed by the Analysis Person as determined pursuant to Article 4.4(b) above; and one (1) part shall be retained by the Sampling Person for a period of sixty (60) days (if Seller is not the Sampling Person) or shipped as Seller directs; one (1) part shall be retained by the Sampling Person for a period of sixty (60) days (if Buyer is not the Sampling Person) or shipped as Buyer directs; and one (1) part shall be retained by the Sampling Person for a period of sixty (60) days to be used for a referee analysis, if necessary.

(d) The Analysis Person shall perform a short proximate analysis on an "as-received" basis, which shall include total moisture, ash, Btu, sulfur and, other data as required by the applicable Confirmation. At the request of either Buyer or Seller, and at the expense of the requesting Party, additional analyses may be performed. The Sampling Person shall or shall cause the results of the short proximate analysis to be reported to the Buyer and Seller, along with train I.D. number, weight and shipping data ("Shipping Report") by fax, telephone (to be confirmed promptly by fax) or other electronic means as soon as available, but in any event within twenty-four (24) hours (forty-eight (48) hours for PRB Sources) of the completion of the loading of each Shipment. By notice to the Sampling Person within twenty-four (24) hours after delivery of the Shipping Report and in any event prior to unloading of the coal at the destination, Buyer or Seller may object to the analysis (the "Objecting Person"), and if so, the

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Sampling Person shall submit the retained sample to an independent testing laboratory selected by and unaffiliated with the Objecting Person for an independent analysis. If the results of the independent analysis are within ASTM (interlaboratory) Reproducibility Limits, the original short proximate, sodium, and any other specification analysis as required in the applicable Confirmation, as appropriate, shall control and the costs of the independent analysis shall be paid by the Objecting Person. If such results for any Specification are not within such Reproducibility Limits, the results of the independent analysis shall control and the costs of the independent analysis shall be borne by the non-Objecting Person. All analyses shall be performed in accordance with then current published applicable ASTM standards.

**4.5 Representative Presence.** Each Party has the right to have a representative present, at such Party's expense, at the Delivery Point during the loading, weighing and sampling of the Coal.

#### **Article 5: Quality Adjustments; Rejection and Suspension Rights**

**5.1 Quality Adjustments.** If Coal delivered under a Transaction varies from the Specifications in the Confirmation for such Transaction and Buyer does not exercise its rejection rights under Article 5.2, quality adjustments shall be calculated pursuant to the formulas set forth in the Confirmation, and for any other specification(s) according to formula(s) set forth in the Confirmation. Within ten (10) Business Days after the end of each month during the Term for each Transaction, the quality adjustments for each Transaction, if any, shall be netted against each other and the net quality adjustment, as appropriate, for all Shipments during such month shall be determined by Seller, and Buyer shall pay Seller the net positive adjustment, if any, or Seller shall credit Buyer the net negative adjustment, if any, on the next invoice (or pay such amount to Buyer in the event no further invoices are due) in accordance with the billing and payment terms of Article 6.

**5.2 Buyer's Rejection Rights.** Unless otherwise specified in the relevant Confirmation, if any Shipment of Coal triggers any of the Rejection Limits specified in the Confirmation for a Transaction (a "Non-Conforming Shipment"), Buyer shall have the option, exercisable by notice to Seller (a) within twenty-four (24) hours of Buyer's receipt of the Sampling Person's short proximate analysis and additional analysis, if any, unless such analysis is received on a weekend or holiday, in which case the Buyer shall provide notice to Seller within twenty-four (24) hours of the next business day, of the Coal provided pursuant to Article 4.4 or (b) within twenty-four (24) hours of receipt of Coal at the generating station if Coal is noticeably contaminated with a foreign material, of either (i) rejecting such Non-Conforming Shipment at the Delivery Point or in route, but prior to unloading from Transporter's equipment or (ii) accepting any Non-Conforming Shipment with a Contract Price adjustment mutually agreed upon by the

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Parties in a Confirmation. If Buyer fails timely to exercise its rejection rights under this Article 5.2 as to a Shipment, Buyer shall be deemed to have waived such rights to reject with respect to that Shipment only. Buyer's failure to timely exercise such notice does not however, constitute a waiver of its right to any penalty adjustment provided for herein or in the relevant Confirmation with respect to such Non-Conforming Shipment. If Buyer timely rejects the Non-Conforming Shipment, Seller shall be responsible for promptly transporting the rejected Coal to an alternative destination determined by Seller and, if applicable, promptly unloading such coal and shall reimburse Buyer for all reasonable costs and expenses associated with the transportation, storage, handling and removal of the Non-Conforming Shipment. Seller shall, at Buyer's election, replace the rejected coal within a reasonable period of time, provided that Buyer gives written notice to Seller of its desire for replacement coal within forty-eight (48) hours after rejection of the Non-Conforming Shipment. Notwithstanding anything to the contrary set forth herein, any claim by Buyer with respect to Coal sold hereunder or any penalty adjustment due hereunder shall be deemed waived by Buyer unless submitted to Seller in writing within thirty (30) days after delivery of such Coal.

**5.3 Suspension Rights.** Unless otherwise specified in the relevant Confirmation, if there are three (3) Non-Conforming Shipments, whether rejected or not, under a Transaction in any three (3) month period or if two (2) out of four (4) consecutive Shipments under a Transaction (with respect to barge coal the preceding test shall be determined by one (1) or more rejectable barges being loaded in each of two (2) days of sequential Shipments under a given Transaction whether or not there are any intervening days without Shipments) 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 such Transaction. A waiver by Buyer of the suspension right for any one period shall not constitute a waiver for subsequent periods. If Seller, within ten (10) days of its receipt of such notice, provides reasonable assurances in writing to Buyer that future Shipments under the Transaction 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. If (i) Seller fails to provide such acceptable assurances within such ten (10) day period, or (ii) after such assurances are provided and for a period of three (3) months thereafter, any Shipments of Coal trigger any of Buyer's rejection rights under Article 5.2 for the Rejection Limit parameter for which there was a prior suspension under such Transaction or should Seller fail to meet one (1) or more of the Suspension limits as set forth in a Schedule 1 to a Confirmation, as the case may be, then such failure shall constitute an Event of Default (as hereinafter defined) with respect to such Transaction.

## Article 6: Settlements; Security

### **6.1 Billing and Payment.**

(a) Unless otherwise agreed by the Parties, after the end of each shipment month during the Term for each Transaction, Buyer and Seller shall provide the other, if necessary, with an invoice, setting forth, as

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appropriate, (i) the aggregate Contract Price owed to Seller for the Coal actually delivered to Buyer at each Delivery Point during the applicable month; (ii) any quality adjustments and supporting calculations determined pursuant to Article 5.1; and (iii) any transportation or other charges owed by Buyer or Seller to the other pursuant to this Master Agreement; (iv) any liquidated damages payments pursuant to Article 8.4 and (v) any Early Termination Payment pursuant to Article 8.3. No later than ten (10) days after receipt of a Party's invoice, (or if such day is not a Business Day, the immediately following Business Day), the receiving Party shall pay, by electronic transfer in immediately available United States funds, the amount set forth on such invoice along with the necessary information enabling reconciliation to the relevant shipment to the applicable payment address provided in Exhibit B. With regard to (iv) and (v) above, the Performing Party may, at its sole option, accelerate payments due them within three (3) Business Days after receipt of invoice. All past due payments shall bear interest at the Interest Rate from and including the date due to but excluding the date paid.

(b) The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller (or if such day is not a Business Day, the immediately following Business Day).

(c) If the receiving Party in good faith reasonably disputes an invoice, it shall nevertheless pay such amount in full no later than the due date, and shall provide a written explanation specifying in detail the basis for the dispute. If any amount disputed and paid by the receiving Party is subsequently determined not to be owing, such amount shall be re-paid within five (5) days along with interest accrued at the Interest Rate from the original due date until the date paid. If any Party otherwise fails to pay amounts under this Master Agreement when due, unless such amount is excused by Force Majeure under Article 7 hereof, in addition to the rights and remedies provided in this Master Agreement, the aggrieved Party shall have the right to: (i) suspend performance under this Master Agreement until such amounts plus interest at the Interest Rate have been paid, and/or (ii) exercise any remedy available at law or in equity to enforce payment of such amount plus interest at the Interest Rate.

**6.2 Netting and Setoff.** If, under any Transaction under this Master Agreement, the Parties 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 may pay to the other Party the difference between the amounts owed. Each Party reserves to itself all rights, setoffs, counterclaims, combination of accounts, liens and other remedies and defenses which such Party has or may be entitled to (whether by operation of law or otherwise). The obligations to make

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payments under this Master Agreement and/or any Transaction may be offset against each other, set off or recouped therefrom.

**6.3 Audit.** Each Party shall maintain accurate records relating to Coal sales and purchases made pursuant to this Master Agreement or any Transactions hereunder. Such records shall be retained for a period of at least two (2) years after completion or termination of the relevant Transaction. Each Party (and its representatives) has the right, at its sole expense during normal working hours and upon reasonable advance notice, to examine the records of the other Party, but only to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement or a Transaction. If requested, a Party shall provide to the requesting Party statements evidencing the quantities of Coal delivered or received at the Delivery Point. Examination of records hereunder shall be limited to one examination per year for each Transaction. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statements and the payments thereof will be promptly made and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made in writing, in reference hereto, prior to the lapse of two (2) years from the rendition thereof; and provided further, that for the purpose of such statement and payment objections, this Article will survive any termination of a Transaction or this Master Agreement.

**6.4. Collateral Requirement/Termination Payment Threshold.** If at any time and from time to time during the term of this Master Agreement (and notwithstanding whether an Event of Default has occurred or is continuing) the Early Termination Payment that would be owed to (i) Williamson in respect of all Transactions involving Duke Energy Kentucky then outstanding should exceed \$10,000,000, Williamson, on any Business Day, may request Duke Energy Kentucky to provide Performance Assurance in an amount equal to the Early Termination Payment in excess of \$10,000,000 (rounding upwards for any fractional amount to the next \$100,000), and (ii) Duke Energy Kentucky in respect of all Transactions involving Williamson then outstanding should exceed (w) \$0.00 in the event a Financial Covenant Event has occurred and is continuing, or (x) \$5,000,000 in the event a Financial Covenant Event is not in effect, Duke Energy Kentucky, on any Business Day, may request Williamson to provide Performance Assurance in an amount equal to the Early Termination Payment in excess of (y) \$0.00 in the event a Financial Covenant Event has occurred and is continuing, or (z) \$5,000,000 in the event a Financial Covenant Event is not in effect (rounding upwards for any fractional amount to the next \$100,000), or such other collateral as may be reasonably acceptable to Duke Energy Kentucky. For avoidance of doubt, until Williamson provides to Duke Energy Kentucky audited financial statements and Duke Energy Kentucky has determined whether Williamson has satisfied the Financial Covenants, a Financial Covenant Event with respect to Williamson shall be deemed to have occurred and be continuing, and Williamson shall provide Performance Assurance in accordance with this Section 6.4. The Performance Assurance or other acceptable collateral shall be delivered within one (1) Business Day of the date of such request or such later date agreed in writing by the Exposed Party. On any Business Day (but no more frequently than weekly

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with respect to Letters of Credit and daily with respect to cash), a Party, at its sole cost, may request such Performance Assurance be reduced correspondingly to that amount of the Early Termination Payment. For purposes of this Article 6.4, the calculation of "Early Termination Payment" shall include all amounts owed but not yet paid by one Party to another Party whether or not such amounts are then due, for performance already provided pursuant to any and all Transactions.

As security for the prompt and complete payment of all amounts due or that may now or hereafter become due from a Party to the other Party and the performance by a Party of all covenants and obligations to be performed by it pursuant to this Agreement, each Party hereby pledges, assigns, conveys and transfers to the other Party, and hereby grants to the other Party a present and continuing security interest in and to, and a general first lien upon and right of set off against, all Performance Assurance which has been or may in the future be transferred to, or received by, the other Party, and all dividends, interest, and other proceeds from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the foregoing and each Party agrees to take such action as the other Party reasonably requests in order to perfect the other Party's continuing security interest in, and lien on (and right of setoff against), such Performance Assurance.

(a) If the Non-Exposed Party disputes the amount of Performance Assurance requested by the Exposed Party and such dispute relates to the amount of the Early Termination Payment claimed by the Exposed Party, then the Pledging Party shall (i) notify the Exposed Party of the existence and nature of the dispute not later than the First Local Business Day following the date that the demand for Performance Assurance is made by the Exposed Party, and (ii) provide Performance Assurance to or for the benefit of the Exposed Party in an amount equal to the Pledging Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's collateral requirement. In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Business Day following the date that the demand is made by the Exposed Party, then the Pledging Party's Early Termination Payment shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average current mark-to-market value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the current mark-to-market value of each Transaction in respect of which the Parties disagree as to the current mark-to-market value thereof, and the Exposed Party shall inform the Pledging Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

(b) If the Exposed Party disputes the amount of Performance Assurance to be reduced by the Exposed Party and such dispute relates to the amount of the Early Termination Payment claimed by the Pledging Party, then the Exposed Party shall (i) notify the Pledging Party of the existence and nature of the dispute not later than the first Local

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Business Day following the date that the demand to reduce Performance Assurance is made by the Pledging Party and (ii) effect the reduction of Performance Assurance to or for the benefit of the Pledging Party in an amount equal to the Exposed Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's collateral requirement. In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Local Business Day following the date that the demand is made by the Non-Exposed Party, then the Non-Exposed Party's Early Termination Payment shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average current mark-to-market value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the current mark-to-market value of each Transaction in respect of which the Parties disagree as to the current mark-to-market value thereof, and the Exposed Party shall inform the Non-Exposed Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

**6.5 Interest on Cash Collateral.** So long as no Event of Default with respect to the Non-Exposed Party has occurred and is continuing, and no Early Termination Date has occurred for which any unsatisfied payment obligations of the Non-Exposed Party exist or been designated as the result of an Event of Default with respect to the Non-Exposed Party and to the extent that an obligation to deliver Performance Assurance would not be created or increased by the transfer, the Exposed Party will transfer to the Non-Exposed Party, in lieu of any interest, dividends or other amounts paid or deemed to have been paid with respect to the Performance Assurance in the form of cash ("Cash Collateral") (all of which may be retained by the Exposed Party), the Interest Amount (as hereinafter defined) three Business Days following the last Business Day of each calendar month. On or after the occurrence of an Event of Default with respect to the Non-Exposed Party or an Early Termination Date as a result of an Event of Default with respect to the Non-Exposed Party, the Exposed Party shall retain any such Interest Amount as additional Performance Assurance hereunder until the obligations of the Non-Exposed Party under this Master Agreement have been satisfied. The term "Interest Amount" shall mean with respect to an "Interest Period" (as hereinafter defined), the aggregate sum of the amounts of interest calculated for each day in that Interest Period on the principal amount of Cash Collateral held by the Exposed Party on that day, determined by the Exposed Party for each such day as follows: (i) the amount of cash held on that day; multiplied by (ii) the Cash Interest Rate (as defined herein) for that day; divided by (iii) 360. "Interest Period" means the period from (and including) the last Business Day on which an Interest Amount was transferred (or if no Interest Amount has yet been transferred, the Business Day on which Cash Collateral was transferred to the Exposed Party) to (but excluding) the Business Day on which the current Interest Amount is to be transferred. "Cash Interest Rate" shall be the Federal Funds Overnight Rate (as hereinafter defined) as from time to time in effect. "Federal Funds Overnight Rate" means the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical

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release designated as H.15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

**6.6 Financial Information; Review of Audited Financial Statements.** Periodically a Party shall have the right to request updated financial information from the other Party. Promptly upon the requesting Party executing Confidentiality undertakings if requested by the other Party, the other Party shall promptly furnish financial information required in order to verify credit worthiness. In addition, UHL&P shall have the right, during the term of this Agreement, to review Williamson's audited financial statements, as available, on a quarterly basis, at a mutually agreeable time at Williamson's corporate offices. At all material times such review shall be for the purpose of confirming that Williamson has satisfied the Financial Covenants and has not experienced a Financial Covenant Event as defined herein. UHL&P shall execute an appropriate confidentiality agreement in connection with such review confirming that the review is limited to such purpose, and forbidding the further dissemination of Williamson's financial information either within UHL&P or to third parties.

**6.7 Letters of Credit.** Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions.

- (i) Unless otherwise agreed to in writing by the parties, each Letter of Credit shall be maintained for the benefit of the Exposed Party. The Non-Exposed Party shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or other Performance Assurance, in each case at least twenty (20) Local Business Days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank issuing a Letter of Credit shall fail to honor the Exposed Party's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of the Exposed Party either a substitute Letter of Credit that is issued by a bank acceptable to the Exposed Party or other Performance Assurance, in each case within one (1) Local Business Day after such refusal.
- (ii) As one method of providing Performance Assurance, the Non-Exposed Party may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.
- (iii) Upon the occurrence of a Letter of Credit Default, the Non-Exposed Party agrees to Transfer to the Exposed Party either a substitute Letter of Credit or other Performance Assurance, in each case on or before the first Local Business Day after the occurrence thereof (or the fifth (5th) Local Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies).

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(iv) (A) Upon or at any time after the occurrence and continuation of an Event of Default with respect to the Non-Exposed Party, or (B) if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Non-Exposed Party for which there exist any unsatisfied payment obligations, then the Exposed Party may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for the Non-Exposed Party's obligations to the Exposed Party. Notwithstanding the Exposed Party's receipt of cash proceeds of a drawing under the Letter of Credit, the Non-Exposed Party shall remain liable (y) for any failure to transfer sufficient Performance Assurance or (z) for any amounts owing to the Exposed Party and remaining unpaid after the application of the amounts so drawn by the Exposed Party.

(v) In all cases, the costs and expenses (including but not limited to the reasonable costs, expenses, and attorneys' fees of the Exposed Party) of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by the Non-Exposed Party.

#### **Article 7: Force Majeure**

7.1 If a Party to a Transaction is delayed in or prevented from performing, in whole or in part, any of its obligations under a Transaction due to, by way of illustration and without limitation acts of God, war, riots, civil insurrection, acts of the public enemy, strikes, lockouts, natural disasters, adverse geologic or mining conditions, breakdown of or damage to necessary facilities or equipment, transportation delays, or other causes, whether of a similar or dissimilar nature, that are beyond the reasonable control and without the fault or negligence of the Party affected thereby, including a breakdown of or damage to necessary faculties or equipment that cause an unplanned outage, and which by the exercise of due diligence, could not have been prevented or avoided by such Party (such events being referred to herein as "Force Majeure"), and such Party gives oral notice and full details of the Force Majeure to the other Party as soon as reasonably practicable after the occurrence of the event of Force Majeure and the date such Force Majeure prevents delivery or receipt of Coal hereunder, (such notice to be confirmed in writing), then during the pendency of such Force Majeure but for no longer period, the obligations of the Parties under such affected Transaction (other than obligations to make payments then due) shall be suspended to the extent required by the event. The Party affected by the Force Majeure shall remedy the Force Majeure with all reasonable dispatch and will keep the other Party advised as to the continuance of the Force Majeure event; provided however, that this provision shall not require Seller to deliver, or Buyer to receive, the Coal at points other than the Delivery Point for the authorized Source including allowable substitutions under the Transaction. Force Majeure does not include: (i) the loss of Buyer's markets; (ii) a change in market conditions including the ability of the Seller to sell Coal at a higher price; (iii) Seller's inability to economically produce or

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obtain the Coal; (iv) Buyer or Buyer's customer to buy Coal at a lower price, whether or not foreseeable.

7.2 If an event of complete or partial Force Majeure persists for a continuous period of sixty (60) days, then the Party not claiming Force Majeure shall have the option, upon three days' prior written notice, to terminate the affected Transaction to the extent affected and the associated obligations of the Parties thereunder (other than payment obligations for prior performance thereunder). In the event of a Force Majeure, delivery of the affected quantity of Coal shall not be made up except by mutual agreement of the Buyer and Seller. If an event of complete or partial Force Majeure persists for a period of ten (10) days or less, then the Party not claiming Force Majeure shall have the option of requiring that the affected Quantity of Coal be shipped, so long as notice of the intent to make-up such shipments is provided within ten (10) days of the notice of termination of such Force Majeure event. The Parties shall mutually agree on a schedule for such make-up shipments.

7.3 If Seller claims Force Majeure and is unable to meet all of its sales obligations under an affected Transaction and any other of its coal sales agreements involving coal of a similar type and quality as the Coal, or if Buyer claims Force Majeure and is unable to meet all of its purchase obligations under an affected Transaction and any other of its coal purchase agreements involving coal of a similar type and quality as the Coal, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated reasonably among the affected Transaction(s) and such other coal supply or purchase agreements involving Coal of a similar type and quality as the Coal from the same Source as identified in the Confirmation.

7.4 It is understood and agreed that significant capital expenditures and settlement of strikes and lockouts shall be entirely within the discretion of the Party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require significant capital expenditure or settlement of strikes and lockouts by acceding to the demands of the opposing Party when such course is inadvisable in the discretion of the Party having difficulty.

#### **Article 8: Events of Default, Remedies and Limitation of Liability**

##### **8.1 Events of Default.**

(a) An event of default ("Event of Default") with respect to a Party (the "Defaulting Party") shall mean any of the following:

- (i) the failure of Defaulting Party to pay when due any required payment and such failure is not remedied within three (3) Business Days after written notice thereof;

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(ii) the failure of the Defaulting Party to comply with its other material obligations under this Master Agreement or under any Transaction covered by this Master Agreement, and such failure continues uncured for three (3) Business Days after written notice thereof, provided that if it shall be impracticable or impossible to remedy such failure within such three (3) Business Day period, the cure period shall be extended for an additional period reasonably necessary to remedy such failure subject to the condition that during the additional period, the Defaulting Party shall be diligently pursuing a remedy for the failure;

(iii) the Defaulting Party shall be subject to a Bankruptcy Proceeding;

(iv) an event described in the last sentence of Article 5.3 has occurred with respect to a Transaction;

(v) any material representation or warranty made by a Party herein shall prove to be untrue in any material respect when made;

(vi) the Defaulting Party fails to establish, maintain, extend or increase Performance Assurance when required pursuant to this Master Agreement; or

(vii) (i) a default, event of default or other similar condition or event in respect to the Defaulting Party under one or more agreements or instruments, individually or collectively, relating to Specified Indebtedness in an aggregate amount of not less than the applicable Cross Default Amount, which results in such Specified Indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount.

(viii) Such Party defaults under a Specified Agreement and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Agreement or defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery



or exchange date of, or any payment on early termination of, a Specified Agreement (or such default continues for at least three Business Days if there is no applicable notice requirement or grace period), where "Specified Agreement" means (a) any privately negotiated rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, agreement for the purchase, sale or transfer of any Commodity or any other Commodity trading transaction, or any similar transaction (including any option with respect to any of these transactions), and (b) any combination of these transactions. For this purpose, the term "Commodity" means any tangible or intangible commodity of any type or description (including, without limitation, electric power, electric power capacity, petroleum, natural gas, and byproducts thereof) or any other similar transaction."

**8.2 Early Termination.** Upon the occurrence and during the continuance of an Event of Default, as to the Defaulting Party, the other Party (the "Non-Defaulting Party") may, in its sole discretion, (a) accelerate and liquidate the Parties' respective obligations under this Master Agreement and all Transactions by establishing, and notifying the Defaulting Party of, an early termination date (which shall be no earlier than the date such written notice is received and no later than twenty (20) days after the date of such notice) on which this Master Agreement and all Transactions shall terminate ("Early Termination Date"), and/or (b) withhold any payments due to the Defaulting Party until such Event of Default is cured, and/or (c) suspend performance of its obligations under this Master Agreement and any Transactions until such Event of Default is cured. If the "Event of Default" is one described in Article 8.1(a) (ii) or (v) above and the Non-Defaulting Party has elected to establish an Early Termination Date, the Non-Defaulting Party may, in its sole discretion, choose to terminate only the Transaction(s) which gave rise to such Event(s) of Default (in which case, this Master Agreement shall remain in effect as to all Transactions not then terminated, without prejudice to the Non-Defaulting Party's rights under this Article 8.2 to declare upon a subsequent Event of Default an Early Termination Date as to any remaining Transactions(s)). If the Event of Default is one described in Article 8.1 (a) clause (iii), this Master Agreement and all Transactions under it shall automatically terminate and the Early Termination Date shall be established by the Non-Defaulting Party. If notice of an Early Termination Date is given under this Article 8.2, the Early Termination Date will occur on the designated date, whether or not the relevant Event(s) of Default is then continuing. Any rights of a Non-Defaulting Party under this Article 8.2 shall be in addition to such Non-Defaulting Party's other rights under this Article 8.

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**8.3 Early Termination Payment.** If an Early Termination Date is established, the Non-Defaulting Party shall in good faith calculate its Gains or Losses, and Costs, resulting from the termination of the terminated Transaction(s), aggregate such Gains or Losses, and Costs, with respect to all terminated Transactions into a single net amount, and then notify the Defaulting Party of the net amount owed or owing. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within one (1) day of its receipt of such notice be required to pay the net amount to the Non-Defaulting Party, including interest at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from such early termination, the Non-Defaulting Party shall pay the net amount to the Defaulting Party in accordance with Article 6.1 hereof. The Non-Defaulting Party shall determine its Gains or Losses, and Costs, as of the Early Termination Date, or, if that is not possible, at the earliest date thereafter that is reasonably possible. If an Event of Default occurs, the Non-Defaulting Party may (at its election) set off any or all amounts which the Defaulting Party owes to the Non-Defaulting Party (or any Affiliates of the Non-Defaulting Party) under this Master Agreement or any other agreement(s) against any or all amounts which the Non-Defaulting Party (or any Affiliates of the Non-Defaulting Party) owes to the Defaulting Party under this Master Agreement and any other agreement(s) between the Parties. The Non-Defaulting Party shall use Commercially Reasonable Efforts to mitigate any costs and damages that it is entitled to hereunder and act at all times in a commercially reasonable manner. 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 such gains, losses and costs.

**8.4 Remedies.** Due to an Event of Default, and provided the Non-Defaulting Party has not set an Early Termination Date, the Non-Defaulting Party may recover the following monetary damages directly resulting from such Event of Default subject to the Non-Defaulting Party's duty to mitigate damages in accordance with Section 10.8. In circumstances where the Non-Defaulting Party has not set an Early Termination Date, the remedies set forth in this Article 8.4 shall be the Non-Defaulting Party's sole and exclusive monetary remedies for the Defaulting Party's failure to perform under a Transaction due to an Event of Default pursuant to Article 8.1 Notwithstanding the foregoing, the Non-Defaulting Party shall maintain all rights in equity to enforce the terms of this Master Agreement and any Transaction thereunder, including rights to demand specific performance thereof.

(a) As an alternative to the damages provision below, if the Parties mutually agree in writing, the Non-Defaulting Party may schedule deliveries or receipts, as the case may be, pursuant to such terms as the Parties agree in order to discharge some or all of the obligation to pay damages. In the absence of such agreement, the following damages provision of this Section shall apply.

(b) Unless excused by Force Majeure or Buyer's failure to perform, if Seller commits an Event of Default or otherwise fails to deliver the

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quantity of coal in accordance with the applicable Transaction and this Master Agreement, Seller shall pay to Buyer an amount for each ton of coal of such deficiency equal to (i) the market price at which Buyer is able, or at the time of Seller's breach, would be able (FOB Delivery Point) to purchase or otherwise receive comparable supplies of Coal of comparable quality on an equivalent  $\$/\text{mmBtu}$ ,  $\text{SO}_2$  adjusted basis ("Replacement Price") minus (ii) the Contract Price agreed to for the specific Transaction; except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.

(c) Unless excused by Force Majeure or Seller's failure to perform, if Buyer commits an Event of Default or otherwise fails to accept delivery of the quantity of coal in accordance with the applicable Transaction and this Master Agreement, Buyer shall pay to Seller an amount for each ton of coal of such deficiency equal to (i) the Contract Price agreed to for the specific Transaction minus (ii) the market price at which Seller is able, or would be able (FOB Delivery Point), to sell or otherwise dispose of the coal at the time of Buyer's breach ("Sales Price") ; except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.

(d) Both Parties shall be subject to a commercially reasonable good faith obligation to mitigate any damages hereunder.

(e) Payment of amounts, if any, determined under paragraph (b) or (c) of this Article 8.4 shall be made in accordance with Article 6.1. All such determinations shall be made in a commercially reasonable manner and the Non-Defaulting Party shall not be required to enter into any actual replacement transaction in order to determine the Replacement Price or Sales Price as appropriate.

(f) If a Party obligated to make a payment under this Section 8.4 timely makes such payment to the other Party, no failure to perform, short of an Event of Default, as described in this Section 8.4 shall constitute an Event of Default pursuant to Section 8.1.

(g) The Parties agree that any Gains, Losses, Early Termination Damages or other damages that directly result from an Event of Default shall be limited to the period measured from the date that such Event of Default first occurs until the date of any contract reopener or similar price reopener date for the subject tonnage.

**8.5 Damages Stipulation.** Each party stipulates and agrees that the methodology for computing damages set forth in Article 8 is not unenforceable as a matter of law.

**8.6 Expenses.** The Defaulting Party will indemnify and hold harmless the Non-Defaulting Party for and against all reasonable out-of-pocket expenses, including Legal Costs, incurred by the Non-Defaulting Party by reason of the enforcement and protection of its rights under this Master Agreement or any Transaction by reason of an Event of Default or a termination of a Transaction, including, but not limited to, costs of collection.

**8.7 Limitation of Liability.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS MASTER AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE LIABLE PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS OTHERWISE PROVIDED IN THIS MASTER AGREEMENT. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE LIABLE PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. NOTWITHSTANDING ANY OTHER PROVISION IN THIS MASTER AGREEMENT OR IN ANY TRANSACTION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS, OR BUSINESS INTERRUPTION DAMAGES, WHETHER BY STATUTE, IN TORT OR IN CONTRACT, UNDER THIS MASTER AGREEMENT, ANY TRANSACTION, ANY INDEMNITY PROVISION OR OTHERWISE.

#### **Article 9: Arbitration**

Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered or the dispute is otherwise resolved. The arbitration shall be conducted in New York, New York and the laws of New York shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) calendar days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by Duke Energy Kentucky and one shall be selected by Williamson. A knowledgeable, disinterested and impartial arbitrator, with significant experience and expertise with respect to coal supply agreements, shall be selected by the

two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) calendar days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be limited discovery during the arbitration as directed by the arbitrator(s). The arbitrator(s) shall have the authority only to award equitable relief (including immediate or expedited injunctive relief) and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) calendar days after the date of the selection of the arbitrator(s) or within such period as the parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article. Each Party agrees that in the event of any dispute between the parties, it will continue to perform its obligations hereunder.

#### Article 10: Miscellaneous

**10.1 Successors and Assigns; Assignment.** This Master Agreement 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 Master Agreement or any Transaction or any of its rights or obligations hereunder or under any Transaction without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, any Party may, without the need for consent from the other Parties (and without relieving itself from liability hereunder and under any Transaction), (a) transfer, sell, pledge, encumber or assign this Master Agreement and/or any Transaction or the accounts, revenues or proceeds hereof or thereof in connection with any financing or other financial arrangements; (b) transfer or assign this Master Agreement and/or any Transaction to an Affiliate of such Party so long as the Affiliate has a credit rating equal to or higher than the original Party; or (c) transfer or assign this Master Agreement and/or any Transaction to any creditworthy person or entity, as such creditworthiness is determined by the non-assigning Party using reasonable commercial practices, succeeding to all or substantially all of the assets of such Party by way of merger, reorganization or otherwise; provided, however, that no such assignment shall in any way relieve the assignor from liability for full performance under this Master Agreement and the Transactions. Any such assignee shall assume and agree to be bound by the terms and conditions of this Master Agreement and such Transactions. Any transfer in violation of this section shall be deemed null and void.

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**10.2 Warranties.** OTHER THAN THOSE EXPRESSLY PROVIDED IN ARTICLE 3.4 AND 4.1 OR IN A CONFIRMATION, SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SALE AND PURCHASE OF COAL HEREUNDER. ALL WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE ARE SPECIFICALLY EXCLUDED. SELLER MAKES NO WARRANTY CONCERNING THE SUITABILITY OF COAL DELIVERED HEREUNDER FOR USE IN ANY FACILITIES.

**10.3 Notices.** All notices, requests, statements or payments shall be made to the addresses specified in Exhibit B hereto. Unless expressly provided otherwise, notices shall be in writing and delivered by letter, facsimile, electronically or other documentary form. Notice by facsimile, electronic means or hand delivery shall be deemed to have been received by the close of Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of the Business Day in which it shall be deemed received at the close of the next Business Day). Notice by overnight mail or courier shall be deemed to have been received one (1) Business Day after it was sent. A Party may change its address by providing notice thereof in accordance with this Article 10.3.

**10.4 Confidentiality.** No Party shall disclose, without the prior written consent of the other Party, the terms of any Transaction to a third party (other than a Party's and its Affiliates' employees, lenders, counsel, or accountants) except in order to comply with any applicable law, order, regulation or exchange rule; provided, each Party shall notify the other Party of any proceeding of which it is aware which may result in disclosure and use Commercially Reasonable Efforts to prevent or limit the disclosure.

**10.5 Governing Law.** THIS MASTER AGREEMENT AND EACH TRANSACTION AND THE RIGHTS AND DUTIES OF THE PARTIES ARISING HEREFROM AND THEREFROM SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

**10.6 Entire Agreement; Amendments; Interpretation.** This Master Agreement, the Schedules, Annexes, Exhibits and Appendices hereto and made a part hereof, if any, and each Transaction, constitute the entire agreement between the Parties relating to the subject matter contemplated by this Master Agreement and supersedes any prior or contemporaneous agreements or representations affecting the same subject matter. Except for any matters which, in accordance with the express provisions of this Agreement, may be resolved by verbal agreement between the Parties, no amendment, modification or change to this Master Agreement shall be enforceable unless reduced to a writing

executed by the Party against whom such amendment, modification or change is sought to be enforced and specifically referencing this Master Agreement. The Parties acknowledge that each Party and its counsel have reviewed and revised this Master Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be used in interpretation of this Master Agreement.

**10.7 Counterparts; Severability; Survival.** This Master Agreement and each Confirmation may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument. Except as may otherwise be stated herein, any provision or Article hereof that is declared or rendered unlawful by any applicable court of law or regulatory agency, or deemed unlawful because of a statutory change, will not otherwise affect the lawful obligations that arise under this Master Agreement or a Transaction. In the event any provision of this Master Agreement is declared unlawful, the Parties will promptly renegotiate to restore this Master Agreement or such Transaction as near as possible to its original intent and effect. All indemnity and audit rights shall survive the termination of this Master Agreement in full for a period of two (2) years (except with respect to audit rights as to Third Party Impositions which shall survive for the applicable statute of limitations, including any extensions thereof).

**10.8 Non-Waiver; Duty to Mitigate; No Partnership or Third Party Beneficiaries.** No waiver by any Party of any of its rights with respect to any other Party or with respect to any matter or default arising in connection with this Master Agreement shall be construed as a waiver of any subsequent right, matter or default whether of a like kind or different nature. Any waiver shall be in writing signed by the waiving Party. Each Party agrees that it has a duty to mitigate damages. Except as otherwise set forth in the Preamble to this Master Agreement, nothing contained in this Master Agreement or in any Transaction shall be construed or constitute any Party as the employee, agent, partner, joint venturer or contractor of any other Party. This Master Agreement and each Transaction is made and entered into for the sole protection and legal benefit of the Parties, and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Master Agreement or any Transaction.

#### **Article 11: Definitions**

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

**"Analysis Person"** means the person or entity specified in the relevant Confirmation that will pay for and perform, or cause to be performed, analysis of the Coal pursuant to a

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Transaction. Unless otherwise stated in the relevant Confirmation, the Analysis Person shall be an independent certified laboratory chosen by good faith agreement of the Parties.

**“ASTM”** means the American Society for Testing and Materials.

**“Bankruptcy Proceeding”** means with respect to a Party or entity, such Party or entity (a) makes an assignment or any general arrangement for the benefit of creditors, (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, (c) has such a petition filed against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (d) otherwise becomes bankrupt or insolvent (however evidenced), or (e) is unable to pay its debts as they fall due.

**“Bill of Lading”** means with respect to a truck delivery, a certified truck scale weight, and with respect to a train delivery, a certified rail weight certificate.

**“Btu”** means the amount of energy required to raise the temperature of one (1) pound of pure water one (1) degree Fahrenheit from 59.5° Fahrenheit to 60.5° Fahrenheit at a constant pressure of 14.73 pounds per square inch absolute.

**“Business Day”** means a day on which Federal Reserve member banks in New York City are open for business unless such day is a Holiday; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

**“Buyer”** means the Party to a Transaction who is obligated to purchase and receive, or cause to be received, Coal during the Term of the Transaction.

**“Buyer’s Customer”** means the party that Buyer has contracted to sell the Coal purchased from Seller under a Transaction.

**“Claims”** means all claims or actions, threatened or filed and whether groundless, false or fraudulent, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such Claims or actions are threatened or filed prior to or after the termination of this Master Agreement.

**“Coal”** means any and all of the coal to be sold by Seller and purchased by Buyer, the quality of which conforms to the Specifications and which does not trigger Buyer’s rejection rights under Article 5.2, or is otherwise accepted by Buyer under this Master Agreement or any Transaction, and which contains no synthetic fuels, is substantially free from any extraneous materials (including, but not limited to mining debris, bone, slate, iron, steel, petroleum coke, earth, rock, pyrite, wood or blasting wire), is substantially consistent in quality throughout a Shipment, meets the size required, and has had no intermediate sizes (including fines) added or removed after the washing process is completed.

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**“Coal Buyer”** means Buyer.

**“Coal Seller”** means Seller.

**“Commercially Reasonable Efforts”** means the taking by a Person of such action as would be in accordance with reasonable commercial practices as applied to the particular matter in question to achieve the result as expeditiously as practicable; provided, however, that such action shall not require that such Person incur unreasonable expense.

**“Contract Price”** means the price in \$U.S. per Ton (unless otherwise specified in the Confirmation) to be paid by Buyer to Seller for the purchase of Coal and any other proper charges pursuant to a Transaction.

**“Contract Quantity”** means the quantity of Coal that Seller agrees to sell to (or if applicable, exchange with), or cause to be delivered to, Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller, pursuant to a Transaction, as specified in a Confirmation.

**“Costs”** means any brokerage fees, commissions and other transactional costs and expenses reasonably incurred either by the Non-Defaulting Party as a result of terminating any hedges or other risk management contracts and/or entering into new arrangements in order to replace the early terminated Transaction(s), and Legal Costs incurred by the Non-Defaulting Party.

\$150,000,000 (one hundred fifty million) <sup>JOHN</sup> <sup>DRH</sup>

**“Cross Default Amount”** means for Duke Energy Kentucky, \$25,000,000 (twenty-five million US dollars, and for Williamson means \$2,500,000.

**“Current Ratio”** means the result of dividing current assets by current liabilities, as such terms are defined consistent with generally accepted accounting principles.

**“Delivery Point”** means the agreed point(s) of delivery and receipt of the Coal pursuant to a Transaction. Title to and risk of loss of the Coal pass to Buyer as set forth in Section 3.3.

**“Eastern Prevailing Time”** means Eastern Standard Time or Eastern Daylight Time in effect in New York, New York, as the case may be.

**“Eastern Mine”** means a coal mine that is located east of the Mississippi River.

**“EBITDA Interest Coverage”** means (a) adjusted earnings from continuing operations before interest, income, taxes, depreciation and amortization; divided by (b) gross interest incurred before subtracting capitalized interest and interest income, as all such terms are defined consistent with generally accepted accounting principles.

**“Exercise Date”** means the agreed date (as specified in the relevant Confirmation for an Option) prior to or on which the Option buyer must notify the Option Seller that the

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Option Buyer has elected to purchase or sell, as applicable, the relevant Option Quantity, if any, under a Transaction. Unless otherwise specified in the Confirmation the Exercise Date will be on or before the first Business Day of the month preceding an Exercise Period.

**“Exercise Period”** means the period of time covered by the exercise of an Option.

**“Exposed Party”** means the Party that the Non-Exposed Party is required to provide Performance Assurances to.

**“FFO/Debt (%)”** means the (a) the sum of (i) net income from continuing operations plus (ii) depreciation and amortization plus (iii) deferred income taxes plus (iv) other non-cash items; divided by (b) the sum of (i) long-term debt plus (ii) current maturities plus (iii) commercial paper plus (iv) other short term borrowings, as all such terms are defined consistent with generally accepted accounting principles.

**“Financial Covenants”** means that Williamson has satisfied each of the following financial metrics, in the reasonable judgment of Duke Energy Kentucky, as evidenced by Williamson’s audited financial statements reflecting Williamson’ financial position over the previous twelve months:

- a. Operating Margin (%) greater than or equal to 17%;
- b. FFO/Debt (%) greater than or equal to 35.9%;
- c. Total Debt/Capital (%) less than or equal to 42.5 %;
- d. Total net worth (\$) greater than \$100 million;
- e. Current Ratio greater than or equal to 1.65;
- f. EBITDA Interest Coverage greater than or equal to 6.5.

**“Financial Covenant Event”** means that Williamson has failed to satisfy one or more of the Financial Covenants, in the reasonable judgment of Duke Energy Kentucky, as evidenced by Williamson’s audited financial statements reflecting Williamson’s financial position.

**“FOB”** shall have the meaning given to such term in the Uniform Commercial Code of the State of New York.

**“Gains”** means, with respect to a Party, an amount equal to the present value of the economic benefit, if any, (exclusive of Costs) to it resulting from the termination of its obligations with respect to a terminated Transaction, determined in a commercially reasonable manner.

**“Holiday”** means a day recognized as a holiday in the State in which the Delivery Point is located.

**“Interest Rate”** means, for any date, two percent over the per annum rate of interest equal to the prime lending rate as may from time to time be published in the *Wall Street*

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*Journal* under "Money Rates" provided the Interest Rate shall never exceed the maximum rate allowed by applicable law.

"Legal Costs" means, with respect to a Party, the reasonable out-of-pocket expenses incurred by it, including legal fees, by reason of the enforcement and protection of its rights under this Master Agreement or any Transaction.

"Legal Proceedings" means any suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority.

"Letter of Credit" means an irrevocable, transferable, standby letter of credit, issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a Credit Rating of at least (a) "A-" by S&P and "A3" by 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, in a form mutually agreed upon by Duke Energy Kentucky and Williamson, with such changes to the terms of the form as the issuing bank may require and as may be acceptable to the beneficiary thereof.

"Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events: (a) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (i) "A-" by S&P or "A3" by Moody's, if such issuer is rated by both S&P and Moody's, (ii) "A-" by S&P, if such issuer is rated only by S&P, or (iii) "A3" by Moody's, if such issuer is rated only by Moody's; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (c) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (d) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of the Agreement, in any such case without replacement; or (e) the issuer of such Letter of Credit shall become Bankrupt; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Master Agreement.

"Long-term Debt" means the sum of all senior debt, including bonds, debentures, bank debt, mortgages, deferred portions of long-term debt, and capital lease obligations with maturity greater than or equal to one year, including amounts for operating lease debt equivalent, and debt associated with accounts receivables sales securitization programs, as all such terms are defined consistent with generally accepted accounting principles.

"Losses" means, with respect to a Party, an amount equal to the present value of the economic loss, if any, (exclusive of Costs) to it resulting from the termination of its obligations with respect to a terminated Transaction, determined in a commercially reasonable manner.

"Moody's" means Moody's Investor Services, Inc. or its successor.

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**“New Taxes”** means (a) any taxes, fees or assessments enacted and effective after the Trade Date of the relevant Transaction, including, without limitation, that portion of any taxes or New Taxes that constitutes an increase.

**“Nomination Period”** shall mean the agreed calendar term for scheduling Coal within the applicable Term pursuant to a Transaction.

**“Non-Exposed Party”** means the Party who is required to provide Performance Assurances hereunder.

**“Operating Margin (%)”** means operating income divided by sales revenue, as such terms are defined consistent with generally accepted accounting principles.

**“Option”** means the right, but not the obligation, which one Party grants to the other Party under a Transaction to either sell or purchase the Option Quantity under that Transaction.

**“Option Quantity”** means the quantity of Coal that is covered by an Option and that, upon the proper exercise of such Option by the Option Buyer, is required to be sold and delivered (and purchased and received) pursuant to the Transaction.

**“PRB”** means the Powder River Basin located in the States of Montana and Wyoming.

**“Performance Assurance”** means collateral in the form of either (i) cash, (ii) Letters of Credit, or (iii) such other form of Performance Assurance, all of which shall be acceptable to the party requesting such Performance Assurance.

**“Reference Market-maker”** means a leading dealer in the relevant market selected by a Party determining its Early Termination Payment in good faith from among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit.

**“Rejection Limits”** means the quality characteristics for the Coal pursuant to a Transaction as specified in the relevant Confirmation that give rise to a rejection right of Buyer pursuant to Article 5.2 of this Master Agreement.

**“S&P”** means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

**“Sampling Person”** means the person or entity specified in the relevant Confirmation that will pay for and perform, or cause to be performed, sampling and analysis of the Coal pursuant to a Transaction. Unless otherwise agreed by the Parties in a Confirmation the Sampling Person shall be the Seller for sampling purposes.

**“Seller”** means the Party to a Transaction who is obligated to sell and deliver or cause to be delivered Coal during the Term of the Transaction.

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**“Shipment”** means, as applicable, one Unit Train, one barge, or the tonnage delivered by truck within a payment period, as set forth on the Confirmation.

**“SO<sub>2</sub>”** means sulfur dioxide and lbs. of SO<sub>2</sub> per mmBtu means sulfur dioxide per million Btu.

**“Source”** means the mine(s) mining complexes loadout river dock(s) or other point(s) or origin that Seller and Buyer agree are acceptable origins for the Coal for a Transaction as specified in the Confirmation.

**“Specifications”** means the quality characteristics for the Coal subject to a Transaction on an “as received” basis, using ASTM standards, specified in a Schedule 1 (Standard) or a Schedule 2 (Periodic Performance) of the relevant Confirmation.

**“Specified Indebtedness”** referred to in Section 8.1 means any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) for the payment or repayment of any money.”

**“Taxes”** means any or all ad valorem, property, occupation, severance, generation, first use, conservation, Btu or energy, utility, gross receipts, privilege, sales, use, consumption, excise, lease, transaction, and other taxes, governmental charges, licenses, fees, permits and assessments, or increases therein, other than taxes based on net income or net worth.

**“Term”** means the period of time from the date a Transaction is to commence to the date a Transaction is to terminate or expire.

**“Ton”** means 2,000 pounds.

**“Total Debt/Capital (%)”** means (a) the sum of (i) Long-term Debt plus (ii) current maturities plus (iii) commercial paper plus (iv) other short term borrowings, divided by (b) the sum of (i) long-term debt plus (ii) current maturities plus (iii) commercial paper plus (iv) other short term borrowings plus (v) Total Member Equity plus (vi) minority interest, as all such terms are defined consistent with generally accepted accounting principles unless otherwise defined herein.

**“Total Member Equity”** means the dollar amount of all equity held by all members of a limited liability company.

**“Transaction”** means a particular transaction agreed to by the Parties relating to the purchase, sale or exchange(s) of Coal, or an Option relating thereto, subject to this Master Agreement.

**“Transportation Specifications”** means the agreement(s) made by Seller, Buyer or any Party’s designee with its respective Transporter(s), as amended from time to time, covering the requirements for each Shipment, which agreements, including the timing

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and tonnage requirements thereunder, shall be no more restrictive than typical agreements for transport of Coal on rail lines, highways, vessels or barges transporting Coal to or from the Delivery Point(s) for third parties or to and from other delivery points in the vicinity of the Delivery Point. Such Transportation Specifications, or relevant portions therein, shall be made available upon request to the extent authorized within the relevant transportation agreement and shall be no more restrictive than typical agreements for transport of Coal on rail lines, highways, vessels or barges transporting Coal to or from Delivery Point(s) for third parties or to and from other delivery points in the vicinity of the Delivery Point.

**“Transporter”** means the entity or entities transporting Coal on behalf of Seller to and at the Delivery Point or on behalf of Buyer or Buyer’s designee from the Delivery Point.

**“Unit Train”** means a train with capacity sufficient to hold the number of Tons of Coal for delivery from the Source(s) as specified in the relevant Confirmation.

**“Western Mine”** means a coal mine that is located West of the Mississippi River.

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Master Agreement effective as of the Effective Date. This Master Agreement shall not become effective as to either Party unless and until executed by both Parties.

**The Union Light, Heat and Power Company d/b/a**

**Duke Energy Kentucky, Inc.**

By: Gianna Manes

Name: Gianna Manes

Title: Group Vice President

**“Williamson”**

**Williamson Energy, LLC**

By: Donald R. Holcomb

Name: DONALD R. HOLCOMB

Title: AUTHORIZED PERSON

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Exhibit A  
Confirmation

Coal Seller: \_\_\_ Coal Buyer: X Coal Seller: X Coal Buyer: \_\_\_  
The Union Light, Heat and Power Company Williamson Energy, LLC

d/b/a Duke Energy Kentucky, Inc.

139 E. Fourth Street, EA606

Cincinnati, OH 45202

Attn: Confirmations

Tel. (704) 382-6344

Fax. (513) 419-5840

Ref #: HC10456E

430 Harper Park Drive

Beckley, WV 25801

Attn: Mike Moran

Tel. (704) 846-8248

Fax. (704)-844-0569

Ref #: \_\_\_\_\_

This Confirmation sets forth the binding agreement entered into between **The Union Light, Heat and Power Company d/b/a Duke Energy Kentucky, Inc.** ("**Duke Energy Kentucky**") and **Williamson Energy, LLC**, on the Trade Date set out below as to a Transaction (this "Transaction") regarding the sale/purchase of Coal under the following terms:

- 1). Commodity: Coal, as defined in the Master Agreement
- 2). Trade Date: 10/26/05
- 3). Product: Illinois Basin High Sulfur Washed Coal
- 4). Test Burn: This Confirmation is subject to Buyer conducting a 60,000 ton test burn, with the coal to be delivered at the 2007 FOB Barge contract price in accordance with a schedule that is mutually agreeable to the parties. This Confirmation may be terminated in the event that the test burn demonstrates operating problems, including without limitation slag formation, resulting from the use of such Coal by Buyer at its plants in Buyer's reasonable judgment. Seller will have the right to have a representative observe such test burn.
- 5). Term: January 1, 2007 thru December 31, 2012, or until termination or cancellation pursuant to any other provision hereof, whichever occurs first ("Term").
- 6). Quantity/Tons: 2007: 150,000 tons (ratable at approximately 12,500 per month)  
2008 - 2012: 750,000 tons annually (ratable at approximately 62,500 tons per month).
- 7). Scheduling (Check One): X Per Master Agreement  
Other: \_\_\_\_\_
- 8). Nomination Period (Check One): X Monthly \_\_\_ Quarterly \_\_\_ Other: \_\_\_\_\_

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- 9). Source(s): Pond Creek No. 1 Mine, Illinois Seam 6, located in Williamson and Franklin Counties, Illinois.
- 10). Delivery Point (Check One):  F.O.B. railcar, subject to the following: At Buyer's option, for calendar years beginning in 2008, with notice of at least 90 days prior to the commencement of the calendar year ("Annual Rail Notice"), Buyer may require Seller to supply up to 250,000 tons annually of the Quantity/Tons defined in Section 6 F.O.B. railcar. In the event Buyer does not provide to Seller an Annual Rail Notice for a given calendar year, Buyer may elect to take 45,000 tons per calendar quarter of such calendar year by rail with a 30 day notice prior to the beginning of each such calendar quarter ("Quarterly Rail Notice"). Within three (3) days of Seller's receipt of Buyer's Quarterly Rail Notice, Seller shall notify Buyer of any unavoidable dock fees to be incurred by Seller during the applicable calendar quarter, up to \$0.75 per ton of quarterly Quantity/Tons of Coal ("Unavoidable Dock Expenses"). Within three (3) days of Buyer's receipt of Seller's notice of Unavoidable Dock Expenses, Buyer shall notify Seller of whether Buyer wishes to proceed with rail shipments in accordance with Buyer's Quarterly Rail Notice, or whether Buyer elects instead to receive such applicable quarterly shipments by barge. In the event Buyer elects to receive its applicable quarterly shipments by rail, the Contract Price for such shipments shall be increased by (i) \$0.25 per ton; plus (ii) the Unavoidable Dock Expenses up to \$0.75 per ton. For avoidance of doubt, Unavoidable Dock Expenses shall include only those expenses assessed or to be assessed against Seller by a docking facility relating to the Quantity/Tons for the applicable calendar quarter that Seller cannot, through commercially reasonable efforts, mitigate, avoid incurring or otherwise eliminate. Further, Seller (x) shall provide Buyer with a written explanation of Seller's efforts to mitigate Unavoidable Dock Expenses, and (y) confirms that the provisions of Section 6.3 – Audit of the Master Agreement shall apply to Unavoidable Dock Expenses.

F.O.B. barge at the mile post 947.5 on the Ohio River or such other points of delivery as approved by Buyer provided that Seller holds Buyer harmless from any incremental transportation costs associated with delivery and receipt of coal at such other points of delivery.

11). Contract Price (\$/ton):	<u>FOB Barge</u>	<u>F.O.B. Railcar</u>
2007	\$37.40	n/a
2008	\$37.40	\$33.34
2009-2010	Re-opener	Re-opener
2011-2012	Re-opener	Re-opener

All FOB Barge pricing includes all harbor shifting and fleeting charges at the Delivery Point.

Barge Loading Terms: Except as otherwise instructed by the Buyer's transportation provider, Seller agrees to load a minimum of 1,500 tons into each open hopper rake jumbo barge and a minimum of 1,700 tons into each open hopper box jumbo barge. If Seller fails to load the barges to meet these minimums, the difference between the minimum tonnage and the actual tonnage times the barge rate (\$/ton) to Buyer's destination will be withheld from payments. Seller agrees

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to ensure that coal is available and that the loading dock has the capacity to load barges within 72 hours of placement within the parameters of the mutually agreed to Delivery Schedule. Failure to load barges within 72 hours may result in demurrage charges to the Seller. Buyer may withhold demurrage charges from final payment. Buyer shall be responsible for all fleeting charges, which shall not exceed \$100.00 per day, incurred for coal that has been loaded into barges at the Delivery Point and has not been removed by Buyer for longer than 72 hours.

Effective for the calendar years 2009 and 2010, and for the calendar years 2011 and 2012 thereafter, the Contract Price will be the Market Price for the applicable two calendar years as determined as hereinafter provided:

By February 1, 2008, and then by February 1, 2010 Buyer and Seller shall provide each other with their determination of the Market Price for the next applicable reopener period. "Market Price" shall mean the prevailing price, F.O.B. barge at the Delivery Point, to be charged or paid, or which is proposed to be paid, in arms-length transactions, for the applicable calendar years, for the quantity and quality of Coal which Seller is to supply during such calendar year. The Parties shall work in good faith to determine such Market Price.

If the Parties fail to agree on Market Price, and therefore the Contract Price for the applicable calendar years, by March 31, 2008, and then by March 31, 2010, as the case may be, this Agreement will automatically terminate effective December 31, 2008, or December 31, 2010 as the case may be.

At the request of Buyer, Seller agrees to cooperate with Buyer and Buyer's synthetic fuel provider, Tyrone Synfuels, LP ("TSLP") to facilitate TSLP's ownership of and use of Coal in its synthetic fuel production facility at the East Bend Electric Generating Station, at no additional cost to Buyer. Any such transfer of ownership and

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use of Coal to TSLP will not relieve Buyer of its obligations and duties under this Confirmation.

- 12). Specifications (Check One):  Per Attached Schedule 1 (Standard)  
 Per Attached Schedule 2 (Periodic Performance)
- 13). Sampling Person (Check One):  Per Master Agreement  
 Other: \_\_\_\_\_
- 14). Analysis Person (Check One):  Per Master Agreement  
 Other: \_\_\_\_\_
- 15). Weight (Check One):  Per Master Agreement  
 Other: \_\_\_\_\_
- 16). Payment (Check One):  Per Master Agreement  
 Buyer will self-invoice bi-monthly. Shipments loaded during the first through the fifteenth of each month are payable 10 days after the end of the month at the Contract Price. Shipments loaded during the sixteenth through the end of each month are payable, with quality adjustments for all Shipments loaded during the month, 25 days after the end of each month. Buyer shall pay, by electronic transfer in immediately available United States funds, the amount set forth on each invoice along with the necessary information enabling reconciliation to the relevant Shipment to the applicable payment address below:

Buyer Billing Contact:

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

Seller Billing Contact:

Attn: Paula Hendrick  
Fax: 618-983-3017

Seller Payment Address:

Bank Name: Huntington National Bank  
900 Lee Street  
Charleston, WV 25301  
Account Number: 01221202657  
ABA number: 044000024

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17). Additional Warranties:

Seller shall provide Product under this Transaction from Source. Seller warrants that it owns, leases, or controls with a contractual agreement, coal reserves at the Source with sufficient coal characteristics necessary to fulfill the requirements of this Transaction, including without limitation total and monthly tonnage requirements and coal quality specifications. Seller further warrants that it shall maintain such ownership, leasehold interest or contractual rights to such coal at the Source for the duration of the Term hereof.

Formulas for Quality Adjustments:

**Btu adjustment:**

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

**Ash Penalty Adjustment:** If the Monthly Weighted Average Actual Ash % exceeds the Monthly Weighted Guaranteed Ash %, the Ash Penalty Adjustment is equal to:

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

**Monthly weighted avg SO<sub>2</sub> Adjustment:**

For purposes of this Agreement, a lb. of SO<sub>2</sub> shall equal  $\frac{\text{AR S\%} \times 20,000}{\text{AR Btu/lb}}.$

If the Monthly Weighted Average Actual lbs SO<sub>2</sub>/mmbtu varies from the Monthly Weighted Average Guaranteed lbs SO<sub>2</sub>/mmbtu for Coal loaded by Seller in any calendar month, the SO<sub>2</sub> Adjustment for all Coal loaded during the month is equal to:

The Contract Price will be adjusted, on a monthly basis, to reflect actual SO<sub>2</sub> value received according to the following formula:

$\$/\text{ton} = (\text{Monthly Weighted Average Guaranteed lbs SO}_2/\text{mmbtu} - \text{Monthly Weighted Average Actual lbs. SO}_2/\text{mmbtu}) \times \text{Monthly Weighted Average Actual Btu/lb} \times ((E \times .10) + \$85) / 1,000,000$

Where: E is defined for any given delivery month as the three (3) day average SO<sub>2</sub> Price of allowances expressed in dollars per ton of SO<sub>2</sub> in the table entitled "Daily Market Assessments, SO<sub>2</sub> Allowances, Price for current vintage year" published in Energy Argus Air Daily, or its successor publication, as published on the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> business days of the subsequent month (e.g., spot price for allowances for January 2007 would be calculated by using an average of the daily market assessment price for the 2007 vintage year published in Energy Argus Air Daily on February 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup>)

However, in the event the monthly weighted average actual lbs. SO<sub>2</sub> per MMBtu is less than 4.0 lbs, Seller's premium shall be calculated as if the monthly weighted average actual lbs. SO<sub>2</sub>/MMBtu equals 4.0 lbs.

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Name: Gianna Mares  
Title: Group Vice President  
Date: 6/20/06

Name: DONALD R. HOLCOMB  
Title: AUTHORIZED PERSON  
Date: 5-7-06

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**Schedule 1  
 Standard to Confirmation: Specifications**

**Illinois Basin High Sulfur Product**

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

Specification	Guaranteed Monthly Weighted Average Quality (Barge or Unit Train)	Shipment Rejection Limits (Barge/Unit Train)	Suspension Specifications (Barge/ Unit Train)
BTU/LB. (min)	11,400	<11,000	<11,200
MOISTURE (max)	10.00%	>13.0%	>11.0%
ASH (max)	10.00%	>12.0%	
SULFUR DIOXIDE (SO <sub>2</sub> ) (max)	4.50 lb./MMBtu	>5.20 lb./MMBtu	>5.20 lb./MMBtu
VOLATILE	36%		
Chlorine	0.20%		
SIZE (2" x 0")			
Top Size (inches) * max	<2"		
Fines (% by wgt)			
Passing 1/4 inch screen (max)	55%		
GRINDABILITY	50	<45	
ASH FUSION TEMPERATURE (°F) (ASTM D1857)			
REDUCING ATMOSPHERE			
Initial Deformation			
Softening (H=W) (min)	2100°		
Softening (H=1/2W) (min)			
Fluid			

\* All the Coal will be such size that it will pass through a screen having square perforations three (3) inches in diameter, but shall not contain more than 55 percent (55.0%) by weight of Coal that will pass through a screen having square perforations one-quarter (1/4) of an inch in diameter.

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

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POWER MARKETING & FUELS

Duke Energy Corporation  
526 South Church St.  
Charlotte, NC 28202

Mailing Address:  
EC11U / PO Box 1006  
Charlotte, NC 28201-1006

March 7, 2007

Mike Moran  
Williamson Energy, LLC  
430 Harper Park Drive  
Beckley, WV 25801

**Re: Confirmation (Trade Date 10/26/05) between Duke Energy Kentucky, Inc. (formerly The Union Light, Heat and Power Company) and Williamson Energy, LLC (the "Confirmation")**

Dear Mike:

This letter will constitute formal notice under Section 4 of the Confirmation that the Confirmation is terminated effective immediately.

Section 4 of the Confirmation states as follows: "This Confirmation is subject to Buyer conducting a 60,000 ton test burn... This Confirmation may be terminated in the event that the test burn demonstrates operating problems, including without limitation slag formation, resulting from the use of such coal by Buyer at its plants in Buyer's reasonable judgment."

Duke has completed the test burn. The test burn indicates that the burning of this coal has resulted in unacceptably high chloride levels in the flue gas desulphurization ("FGD") equipment at the East Bend plant. Operation at the observed chloride level interferes with FGD efficiency and will result in damage to the FGD equipment.

We regret that the test burn was unsuccessful, but the results clearly indicate that the coal is incompatible with our operations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elliott Batson', written in a cursive style.

Elliott Batson  
Director, Coal Procurement