



**Fuel Supplier: ACNR Coal Sales, Inc**

**Fuel Type: Coal**

**Contract No: BRE-22-001**

**Description: Coal Supply Amendment  
Effective April 16, 2024**

Contract # BRE-22-001

**AMENDED AND RESTATED COAL SUPPLY AGREEMENT**

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3 This Amended and Restated Coal Supply Agreement (the "Agreement") is dated as of April  
4 [16], 2024 (the "Effective Date"), by and among BIG RIVERS ELECTRIC CORPORATION, a  
5 Kentucky rural electric cooperative corporation, 201 Third Street, Henderson, Kentucky 42420  
6 ("Buyer") and ACNR COAL SALES, INC. ("ACNR"), an Ohio corporation, 46226 National  
7 Road, St. Clairsville, Ohio, 43950 ("Seller"). Buyer and Seller are each referred to herein as a  
8 "Party," and collectively, the "Parties." This Agreement establishes the terms and conditions  
9 pursuant to which Buyer shall purchase and Seller shall sell coal of the qualities and quantities  
10 described herein. The following terms constitute all of the terms and conditions of the binding  
11 agreement between the Parties regarding this transaction. Seller agrees to sell and deliver, and  
12 Buyer agrees to buy and accept, bituminous coal on the terms and conditions stated in this  
13 Agreement.

14 **WITNESSETH:**

15 WHEREAS, Buyer and Seller entered into a Coal Supply Agreement for the sale and  
16 purchase of coal during the period January 1, 2022 to December 31, 2024 under Contract # BRE-  
17 22-001, dated November 12, 2021 (the "Original Agreement"); and

18 WHEREAS, the Parties wish to memorialize certain mutually agreed amendments to the  
19 terms set forth in the Original Agreement;

20 NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and for  
21 other good and valuable consideration, the receipt and sufficiency of which are hereby  
22 acknowledged, the Parties hereto agree as follows:

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1 Upon its execution by the authorized representative of each Party, and effective as of the Effective  
2 Date, the Original Agreement is amended as follows:

3 1. the terms expressed in this Agreement (Amended and Restated Coal Supply Agreement)  
4 shall govern all the obligations of the Parties relating to the subject matter therein;

5 2. save to the extent relating to:

6 i. The Parties agree that at some point during calendar year 2024, Pride Mine will no  
7 longer supply Buyer with coal under the Agreement and will be automatically  
8 removed as a Source under the Agreement;

9 ii. The Parties agree to add the Marshall County Mine as a Source under the Agreement;

10 iii. The Parties agree to reduce the 2024 calendar year Base Quantity of coal under the  
11 Agreement by 200,000 tons with neither Party having any remaining obligation with  
12 respect to such tons; and

13 iv. BIG RIVERS ELECTRIC CORPORATION intends to enter in a separate coal supply  
14 agreement with FORESIGHT COAL SALES LLC where BIG RIVERS  
15 CORPORATION shall purchase and FORESIGHT COAL SALES LLC shall deliver  
16 200,000 tons of coal.

17 Nothing in this Agreement shall act as a waiver of any rights, obligations, and/or liabilities  
18 accrued prior to the Effective Date hereof (for the avoidance of doubt, Buyer shall remain  
19 obligated to pay for all coal that is delivered prior to the execution of this Agreement); and

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21 3. Upon execution of this Agreement, this Agreement amends, restates, supersedes, and  
22 replaces the Original Agreement.

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**SECTION 1. GENERAL.**

(a) The above recitals and other terms and conditions are true and correct and comprise a part of this Agreement.

(b) Seller will sell to Buyer, and Buyer will buy from Seller, bituminous steam coal under all the terms and conditions of this Agreement.

(c) Each covenant, representation and warranty given herein by a Party is a material inducement for the other Party to enter into this Agreement.

**SECTION 2. TERM.** The term of this Agreement shall commence on the January 1, 2022 and shall continue until the end of the day on December 31, 2024, unless sooner terminated pursuant to any of the terms set forth herein (the "Term").

**SECTION 3. QUANTITY.**

§ 3.1 Base Quantity. Subject to the terms and conditions set forth in this Agreement, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the following annual base quantity of coal ("Base Quantity") for the indicated calendar year:

<u>YEAR</u>	<u>BASE QUANTITY (TONS)</u>	
	<u>Minimum</u>	<u>Maximum</u>
2022	400,000	500,000
2023	400,000	500,000
2024	270,000	300,000

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2 As used herein, the term "ton" shall mean 2,000 pounds.

3 The Base Quantity of coal to be delivered in a given calendar year shall be nominated by  
4 Buyer on a quarterly basis and such deliveries shall occur during that calendar year. Buyer  
5 previously nominated the maximum quarterly amount for each quarter during the period January  
6 1, 2022 through December 31, 2023. The Parties agree that there were 235,491 Make-Up Tons  
7 that were not delivered and accepted in calendar year 2023 ("2023 Make-Up Tons"). The 2023  
8 Make-Up Tons shall be the first tons delivered and accepted in 2024. As of March 31, 2024,  
9 221,235 tons of the 2023 Make-Up Tons have been delivered and received.

10 For the Third Quarter and Fourth Quarter of calendar year 2024 Base Quantity, within  
11 thirty (30) days of the Effective Date of this Agreement for the current calendar quarter, and thirty  
12 (30) days prior to the beginning of each calendar quarter thereafter, Buyer shall elect the amount  
13 of coal nominated for that quarter. In no event shall Buyer nominate more than the maximum  
14 quarterly amount (75,000 tons for the quarter), nor less than the minimum quarterly amount  
15 (67,500 tons for the quarter). In any event, Buyer must purchase no less than the Minimum Base  
16 Quantity tonnage and no more than the Maximum Base Quantity tonnage during each calendar  
17 year. For avoidance of doubt, as example to the process, Buyer shall provide notice to Seller no  
18 later than June 1 in for coal delivery between July 1 and September 30 (during the Third quarter)  
19 of the calendar year. In this example, Buyer could nominate delivery of 67,500 tons, July 1 through  
20 September 30. As further example, Buyer could nominate no later than June 1 for the delivery of  
21 75,000 tons during the period of July 1 through September 30. In the event Buyer fails to provide  
22 a timely quarterly nomination, Seller shall deliver pursuant to the prior quarter's nomination.

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1 Notwithstanding the above, Buyer may seek Seller's approval to modify the quarterly nomination  
2 outside of the process as described herein. Seller may, at its sole discretion, accommodate Buyer's  
3 request or reject Buyer's request.

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5 § 3.2 Delivery Schedule. Unless otherwise mutually agreed and except as otherwise  
6 provided in this Agreement, Seller shall deliver and Buyer shall take delivery of the Base Quantity  
7 on a monthly ratable basis as adjusted during the applicable calendar quarter to reflect Buyer's  
8 outages, Seller's annual miner's vacation, and minor delays in transportation. Time is of the  
9 essence with respect to such deliveries. Buyer will advise Seller monthly of its desired delivery  
10 schedule, and the Parties shall cooperate and work together in good faith to agree on a reasonable  
11 and mutually agreeable delivery schedule within the Term and within each month during the Term.  
12 Failure by Seller to deliver or failure by Buyer to accept shipments in accordance with the  
13 foregoing schedules, as mutually agreed, other than a failure resulting from rejection or suspension  
14 pursuant to the provisions of Section 6 hereof, or a force majeure event, as defined in § 10 hereof,  
15 shall constitute a material breach within the meaning of § 14 of this Agreement.

16 § 3.3 Make-Up Tons. Notwithstanding the provisions of § 3.1 or § 3.2 above, if Seller or  
17 Buyer fails to supply or to take delivery of (as applicable) the entire Base Quantity scheduled for  
18 a particular year for any reason other than a force majeure event (as provided in Section 10 hereof),  
19 then the non-defaulting Party, may, at its sole option and without any obligation to do so or waiver  
20 of any other rights, elect to make up such undelivered or un-received quantities ("Make-Up Tons")  
21 by having the defaulting Party deliver or take delivery of the Make-Up Tons during the calendar  
22 year immediately following the calendar year in which such Make-Up Tons should have been

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1 delivered (the "Make-Up Year"). If necessary, the Term of this Agreement will be automatically  
2 extended to include the Make-Up Year. Prior to making such election, the non-defaulting Party  
3 may request from the defaulting Party adequate assurances, reasonably satisfactory to the non-  
4 defaulting Party, that the defaulting Party is capable of delivering or receiving, and will deliver or  
5 receive, during the Make-Up Year, (i) the Base Quantity applicable for the Make-Up Year under  
6 this Agreement and (ii) the Make-Up Tons.

7 In the event the non-defaulting Party makes the election to deliver or receive Make-Up  
8 Tons, as applicable, the defaulting Party shall deliver or receive the Base Quantity and the Make-  
9 Up Tons during the Make-Up Year pursuant to a new, mutually-agreed delivery schedule  
10 incorporating the delivery of the Make-Up Tons. In such event, for accounting and payment  
11 purposes, the first tons delivered in the Make-Up Year shall be considered to be the Make-Up  
12 Tons, and deliveries of Make-Up Tons will not be considered a part of the Base Quantity applicable  
13 for the Make-Up Year.

14 If the defaulting Party's failure to deliver or receive all of the Base Quantity during a  
15 particular year constitutes a breach of or other violation under this Agreement, the existence of  
16 this § 3.3 shall not act as a waiver by the non-defaulting Party of such breach or violation, nor shall  
17 it act as a limitation on the non-defaulting Party's remedies. However, if the non-defaulting Party  
18 elects to deliver or receive the Make-Up Tons as provided in this § 3.3, then such election and the  
19 receipt or delivery of the Make-Up Tons in the Make-Up Year shall be the non-defaulting Party's  
20 sole and exclusive remedy as to the Make-Up Tons. Nothing in this § 3.3 shall limit the remedies  
21 of the non-defaulting Party for failure of the defaulting Party to perform with regard to the delivery  
22 or receipt of the Make-Up Tons.

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**SECTION 4. SOURCE.**

§ 4.1 Source. The coal sold hereunder shall be mined, fully washed, and supplied from the Western Kentucky #9 geological seam from the Pride Mine underground mining operations located in Muhlenberg County, Kentucky and the Pittsburgh #8 geological seam from the Marshall County Mine underground mining operation located in Marshall County, West Virginia, (each a Source and collectively the "Coal Properties"); provided that Pride Mine has ceased production and will automatically be removed as a Source under this Agreement when the coal stockpiles at the Pride Mine are depleted. Seller represents that it or one of Seller's affiliates has title to or legal control over the Coal Properties and the coal located on the Coal Properties. Pride Mine is being closed and at a point in time during calendar year 2024, Seller shall provide written notification to Buyer that Pride Mine will no longer supply Buyer with coal under this Agreement. Seller also represents and warrants that, when delivered to Buyer, the coal will be free and clear of all liens and encumbrances and Buyer shall have good and marketable title to the delivered coal.

§ 4.2 Assurance of Capacity, Operation, and Reserves. Subject to the provisions of this Agreement, Seller represents and warrants that the Marshall County Mine contains recoverable coal of a quality and in quantities which will be sufficient to satisfy all the requirements of this Agreement. Seller agrees and warrants that it or its affiliates will have at the Marshall County Mine adequate machinery, equipment, wash plant and preparatory facilities, and other facilities to produce, prepare, and deliver coal in the quantities and of the quality required by this Agreement. Seller further agrees to operate and maintain such machinery, equipment, and facilities in



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1 accordance with good mining practices so as to efficiently and economically produce, prepare, and  
2 deliver such coal.

3 Seller represents and warrants that it has the right and authority to, and does hereby,  
4 dedicate to this Agreement sufficient reserves of coal meeting the quality specifications hereof  
5 lying on or in the Marshall County Mine so as to fulfill the quantity and quality requirements  
6 hereof. Seller's dedication of reserves shall not be construed to limit or restrict Seller's ability to  
7 claim a valid force majeure event under provisions of Section 10 herein.

8 Seller agrees that Buyer is not providing any capital for the purchase of such machinery,  
9 equipment, and/or facilities and that Seller shall operate and maintain same at its sole expense.

10 Seller or Seller's affiliates have obtained, or will obtain prior to the Effective Date of this  
11 Agreement, and will maintain, all required permits and licenses for the production and delivery of  
12 the coal as required by this Agreement. Seller recognizes that the processes of obtaining permits  
13 may be subject to delays and regulatory uncertainties. Seller agrees and covenants to use  
14 commercially reasonable efforts to obtain or cause to be obtained the permits on a timely basis so  
15 as to prevent any interruption in its planned operations.

16 § 4.3 Non-Diversion of Coal. Seller agrees and warrants that it will not, without Buyer's  
17 express prior written consent, use or sell coal from the Coal Properties so as to reduce the  
18 economically recoverable balance of coal in the Coal Properties to an amount of coal less than that  
19 required to be supplied to Buyer hereunder.

20 § 4.4 Seller's Preparation of Mining Plan. Seller or Seller's affiliates shall prepare a  
21 complete mining plan for the Coal Properties with adequate supporting data to demonstrate Seller's  
22 capability to have coal produced from the Coal Properties which meets the quantity and quality

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1 specifications of this Agreement. Seller shall, upon Buyer's request, provide information to Buyer  
2 regarding such mining plan which shall contain maps and a narrative describing areas and seams  
3 of coal to be mined and shall include (but not be limited to) the following information: (i) reserves  
4 from which the coal will be produced during the term hereof and the mining sequence, by year (or  
5 such other time intervals as mutually agreed) during the term of this Agreement; (ii) methods of  
6 mining such coal; (iii) methods of transporting and washing the coal to ensure compliance with  
7 the quantity and quality requirements of this Agreement including a description and flow sheet of  
8 the preparation plant; (iv) quality data plotted on the maps depicting data points and isolines by  
9 ash, sulfur, and BTU/lb.; and (v) quality control plans including sampling and analysis procedures  
10 to ensure individual Shipments, as defined in § 6.2, meet quality specifications. If delivery of such  
11 complete mining plan is requested by Buyer, it shall be delivered to Buyer on or before thirty (30)  
12 days after such request.

13 Buyer's receipt of the mining plan or other information or data furnished by Seller (the  
14 "Mining Information") shall not in any manner relieve Seller of any of Seller's obligations or  
15 responsibilities under this Agreement; nor shall Buyer's review of the Mining Information be  
16 construed as constituting an approval of Seller's proposed mining plan for any purposes. Review  
17 by Buyer of the Mining Information is for Buyer's purposes only and is to allow Buyer to evaluate  
18 Seller's capability to supply coal as required by this Agreement. Buyer shall maintain as  
19 confidential all Mining Information disclosed by Seller and shall not disclose or use such Mining  
20 Information for any purpose other than to evaluate Seller's performance and compliance with the  
21 provisions of this Agreement, subject only to any disclosures which may be required by law or in  
22 connection with a judicial or administrative proceeding before courts, regulatory bodies, or

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1 agencies such as the Kentucky Public Service Commission; provided, however, Buyer shall, where  
2 Buyer is legally permitted to do so, give prompt notice of such judicial or administrative  
3 proceeding to Seller so that Seller may either promptly seek an appropriate protective order and/or  
4 promptly waive compliance. Buyer acknowledges that nothing in this Agreement or otherwise  
5 shall prevent Seller, in Seller's sole discretion, from changing all or any portion of the Mining  
6 Information at any time based on prudent mining practices.

7  
8 Upon request, Buyer shall have the right to request a mining plan update showing progress  
9 to date, Seller's conformity to the original mining plan, then-known changes in reserve data, and  
10 planned changes in mining progression, plans, or procedures.

11 § 4.5 Relationship of the Parties. Each Party agrees that it is not and will not hold itself  
12 out as a partner, joint venturer, employee, agent, or representative of the other Party. Nothing  
13 herein contained shall be construed as creating a single enterprise, joint venture, agency,  
14 partnership, joint employer, owner-contractor, or lessor-lessee relationship between Buyer and  
15 Seller or between Buyer and the owners or operators of the Coal Properties.

16 Each Party shall have sole and exclusive authority to direct and control its respective  
17 activities and operations, and those of its affiliates and/or any subcontractors, undertaken in the  
18 performance of their respective obligations under this Agreement. Each Party shall exercise full  
19 and complete control over its respective work force and labor relations policies. Each Party shall  
20 have no authority or control over the other Party's operations or work force.

21 **SECTION 5. DELIVERY**. Coal may be delivered to Buyer F.O.B. coal pile at Buyer's  
22 D. B. Wilson Generating Station, 5663 State Route 85 West, Centertown, Kentucky as directed by

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1 Buyer (the "Truck Delivery Point") or coal shall be delivered to Buyer F.O.B. Buyer's barge at the  
2 Marshall County Mine Loadout (Mile 110 Ohio River) (the "Barge Delivery Point").

3 § 5.1 Truck Delivery Point. In addition to coal delivered at the Truck Delivery Point, Buyer  
4 may also direct Seller to deliver the coal by truck at a location different from the Truck Delivery  
5 Point, provided, however, any increase in transportation expense for the cost of transporting the  
6 coal to the destination(s) designated by Buyer shall be for Buyer's account. Any resultant savings  
7 in such transportation costs shall be retained by Buyer. Buyer agrees that Buyer shall not divert  
8 or resell any coal purchased pursuant to this Agreement to any third party.

9 § 5.2 Title Risk of Loss. For coal delivered at the Truck Delivery Point, title to and risk of  
10 loss of coal will pass to Buyer and the coal will be considered to be delivered when trucks  
11 containing the coal are fully unloaded by Seller or Seller's trucking contractor onto the coal pile  
12 at the Truck Delivery Point. For coal delivered at the Barge Delivery Point, title to and risk of loss  
13 of coal delivered by barge will pass to Buyer and the coal will be considered to be delivered when  
14 the Buyer or Buyer's barging contractor actually unloads the barges at Buyer's D.B. Wilson  
15 Generating Station.

16 § 5.3 Cost of Transportation. For coal delivered to Buyer at the Truck Delivery Point,  
17 Seller shall arrange and pay for all costs of (i) transporting the coal from the Coal Property to the  
18 Truck Delivery Point (including, without limitation, all costs incurred at the Coal Property  
19 associated with the handling, transport, washing, and blending), and (ii) blending, loading, and  
20 trimming the coal into trucks to the proper weight and the proper distribution within the trucks.  
21 Buyer shall reimburse Seller for all reasonable Costs of Transportation, which includes Trucking  
22 Cost and Diesel Fuel Adjustment, as defined in § 8.4. For coal delivered to Buyer at the Barge

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1 Delivery Point, Seller shall arrange and pay for all costs of (i) transporting the coal from the Coal  
2 Property to the Delivery Point (including, without limitation, all blending, loading, truck, barge  
3 and trans-loading costs, and all fleeting, switching, harbor and other port charges) and  
4 (ii) blending, loading, and trimming the coal into barges to the proper weight or draft and the  
5 proper distribution within the barges. Buyer shall arrange and pay for transporting the coal by  
6 barge from the Delivery Point to the destination designated by Buyer (the "Destination"), with the  
7 exception that Seller shall reimburse Buyer for all barge transportation costs (the "Barge  
8 Transportation Costs") as set forth in § 8.5.

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10 § 5.4 Truck Delivery. Seller or its contractor shall furnish suitable trucks in accordance  
11 with the mutually agreeable delivery schedule developed pursuant to § 3.2. Seller shall ensure that  
12 the truck cargo container holds are clean of any Debris prior to loading and that the trucks are  
13 loaded to the appropriate weight. Seller shall be liable for any charges for under or over-loading  
14 trucks or for any damage attributable to Seller's or Seller's trucking contractor's action or inaction  
15 during transit and, except to the extent caused by Buyer or Buyer's contractors, while operating  
16 on Buyer's properties, during ingress, unloading, sampling, and egress from Buyer's properties.  
17 Buyer shall provide Seller or Seller's trucking contractor convenient and safe ingress, transit, and  
18 egress while the trucks are on the Buyer's properties. Seller represents and warrants and shall  
19 provide acceptable certificates to Buyer that it or its trucking contractor carries appropriate  
20 insurance with basic coverage of not less than two million dollars (\$2,000,000.00) and Seller shall  
21 provide evidence thereof to Buyer in the form of a certificate of insurance from the insurance  
22 carrier or an acceptable certificate of self-insurance with a requirement for thirty (30) days advance

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1 notification to Buyer in the event of a termination or reduction in coverage under the insurance.  
2 Repair for any damage caused by Seller or Seller's trucking contractor occurring at the Truck  
3 Delivery Point shall be at the expense of Seller.

4 Buyer shall indemnify, save harmless, and defend Seller and its affiliates and their officers,  
5 directors, agents, contractors, stockholders, and employees (all referred to in this sentence as  
6 "Seller") from and against any liabilities, expenses, losses, claims, damages, penalties, causes of  
7 action, or suits, and all other obligations whatsoever, including without limitation, all judgments  
8 rendered against and all fines and penalties imposed upon Seller (whether severally, or in  
9 combination with others) and any reasonable attorneys' fees and any other costs of litigation (all  
10 of which are hereinafter referred to as "Liabilities") arising out of injuries or death to any person(s),  
11 or damage to any property, to the extent caused by (i) Buyer's or Buyer's contractors' performance  
12 of this Contract or (ii) Buyer's or Buyer's contractor's negligence or willful misconduct. Any  
13 injury or death to person(s) or damage to property as hereinbefore described shall be reported to  
14 Seller by Buyer immediately upon the occurrence thereof, and confirmed in writing as soon as  
15 possible.

16 Seller shall indemnify, save harmless, and defend Buyer and its affiliates and their officers,  
17 directors, agents, contractors, members, and employees (all referred to in this sentence as "Buyer")  
18 from and against any liabilities, expenses, losses, claims, damages, penalties, causes of action, or  
19 suits, and all other obligations whatsoever, including without limitation, all judgments rendered  
20 against and all fines and penalties imposed upon Buyer (whether severally, or in combination with  
21 others) and any reasonable attorneys' fees and any other costs of litigation arising out of injuries  
22 or death to any person(s), or damage to any property, to the extent caused by (i) Seller's or Seller's

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1 contractors' performance of this Contract, or (ii) Seller's or Seller's contractors' negligence or  
2 willful misconduct. Any injury or death to person(s) or damage to property as hereinbefore  
3 described shall be reported to Buyer by Seller immediately upon the occurrence thereof, and  
4 confirmed in writing as soon as possible.

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6 § 5.5 Barge Delivery. Buyer or its contractor shall furnish suitable barges in accordance  
7 with the mutually agreeable delivery schedule developed pursuant to § 3.2. Unless instructed  
8 otherwise by the barging contractor or unless river conditions require that lesser amounts must be  
9 loaded, Seller shall ensure that rake barges are loaded to a minimum tonnage of 1,550 tons per  
10 barge and box barges are loaded to a minimum tonnage of 1,650 tons per barge. In the event lesser  
11 amounts are loaded, notice of light loading and river condition requirements for such light loading  
12 shall accompany Seller's shipment notice. Buyer shall arrange for transporting the coal from the  
13 Barge Delivery Point to Buyer's generating station(s) and shall pay for the cost of such  
14 transportation. Seller will reimburse Buyer for all such Barge Transportation Costs pursuant to §  
15 8.5. Seller shall be granted forty-eight (48) hours free time to load barges, which free time shall  
16 run from the loading date agreed upon by the Parties. Seller shall require of the loading operator  
17 and/or dock that the barges provided by Buyer or Buyer's contractor be provided convenient and  
18 safe ingress, transit, berth, loading, and egress while the barges are at the Seller's and/or its  
19 affiliates' dock. While the barges are in the care and custody of the loading dock, Seller shall  
20 ensure, at its expense, that all U.S. Coast Guard regulations and other applicable laws, ordinances,  
21 rulings, and regulations shall be complied with, including adequate mooring and display of  
22 warning lights; and that any water in the cargo boxes of the barges shall be pumped out by a

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1 loading dock operator prior to loading. Seller represents and warrants and shall provide acceptable  
 2 certificates to Buyer that the loading dock operator carries Landing Owners / Stevedoring /  
 3 Wharfinger's Liability insurance with basic coverage of not less than \$2,000,000.00 and Seller  
 4 shall provide evidence thereof to Buyer in the form of a certificate of insurance from the insurance  
 5 carrier or an acceptable certificate of self-insurance with a requirement for thirty (30) days advance  
 6 notification to Buyer in the event of a termination or reduction in coverage under the insurance.  
 7 Seller shall ensure that barge decks are swept clean of any debris and ready for Buyer or Buyer's  
 8 contractor to pick-up the loaded barges upon Seller's notification.

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 11 **SECTION 6. QUALITY.**

12 § 6.1 Specifications. The coal delivered from the Pride Mine shall conform to the following  
 13 specifications on an "as-received" basis:

Quality Specifications	Guaranteed Monthly Weighted Average	Rejection Limits (Per Shipment)
BTU/lb.	Min 11,600	< 11,400
Ash	Max. 8.50 lbs./MMBTU	> 9.47 lbs./MMBTU
Moisture	Max. 10.58 lbs./MMBTU	> 12.00 lbs./MMBTU
Sulfur	Max. 2.60 lbs./MMBTU	> 2.78 lbs./MMBTU
Chlorine	max. 0.04 lbs./MMBTU	> 0.05 lbs./MMBTU
Mercury (dry basis)	max. 0.14 ug/g	> 0.15 ug/g
Calcium Oxide (ash basis)	max. 2.50 lbs./MMBTU	
Arsenic	max. 11.00 ug/g	
Vanadium	max. 50.00 ug/g	
<b>SIZE (2" x 0"):</b>		
Top size (inches)*	max. 2" x 0"	> 4"
Fines (% by weight) passing 1/4" screen	max. 55%	> 60 %



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3 % BY WEIGHT:

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5	VOLATILE	34.0	< 30.0
6	FIXED CARBON	43.0	< 40.0
7	GRINDABILITY (HGI)	50.0	< 48.0
8	BASE ACID RATIO (B/A)	0.50	> 0.75
9	Fouling Index	0.25	> 0.50
10	Slagging Index	1.55	> 1.65

11

12 ASH FUSION TEMPERATURE (°F) (ASTM D1857)

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14 REDUCING ATMOSPHERE

15	Initial Deformation	min. 1950	min. 1900
16	Softening (H=W)	min. 2000	min. 1950
17	Softening (H=1/2W)	min. 2050	min. 2000
18	Fluid	min. 2250	min. 2200

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20 OXIDIZING ATMOSPHERE

21	Initial Deformation	min. 2440	min. 2390
22	Softening (H=W)	min. 2510	min. 2460
23	Softening (H=1/2W)	min. 2550	min. 2500
24	Fluid	min. 2610	min. 2540

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27 The coal delivered from the Marshall County Mine shall conform to the following  
28 specifications on an "as-received" basis:

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30	Quality	Guaranteed Monthly	Rejection Limits
31	<u>Specifications</u>	<u>Weighted Average</u>	<u>(Per Shipment)</u>
32	BTU/lb.	Min. 11,600	< 11,400
33	Ash	Max. 8.50 lbs./MMBTU	> 9.47 lbs./MMBTU
34	Moisture	Max. 10.58 lbs./MMBTU	> 12.00 lbs./MMBTU
35	Sulfur	Max. 2.60 lbs./MMBTU	> 2.78 lbs./MMBTU

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38 \* All the coal will be of such size that it will pass through a screen having circular

39 perforations three (3) inches in diameter, but shall not contain more than fifty-five percent (55%)

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1 by weight of coal that will pass through a screen having circular perforations one-quarter (1/4) of  
2 an inch in diameter.

3 The Base Acid Ratio (B/A) is herein defined as:

$$4 \quad \text{BASE ACID RATIO (B/A)} = \frac{(Fe_2O_3 + CaO + MgO + Na_2O + K_2O)}{(SiO_2 + Al_2O_3 + TiO_2)}$$

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8 Note: As used herein: > means greater than;  
9 < means less than.

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11 § 6.2 Definition of "Shipment". As used herein, a "Shipment" shall mean one (1) day's  
12 delivery of loaded coal trucks or one (1) fully loaded barge of coal. Buyer shall not be responsible  
13 for improperly loaded trucks or improperly loaded barges. Further, Buyer has the right to refuse  
14 delivery of over-weight or improperly "trimmed" coal trucks or barges.

15 § 6.3 Rejection. Buyer has the right, but not the obligation, to reject any Shipment which  
16 fail(s) to conform to the Rejection Limits set forth in § 6.1. Buyer must reject such coal within  
17 seventy-two (72) hours of Buyer's receipt of the coal analysis provided for in § 7.2 or such right  
18 to reject is waived. Buyer has the further right, but not the obligation, to reject at any time, any  
19 Shipment that contains extraneous materials, which include, but are not limited to, slate, rock,  
20 wood, mining materials, metal, steel, etc. ("Debris").

21 In the event Buyer rejects a Shipment based upon Debris in truck loads which are a part  
22 of the Shipment or within a barge Shipment, title to and risk of loss with respect to the coal shall  
23 be considered to have never passed to Buyer. Seller shall promptly remove the rejected coal from  
24 Buyer's premises or mutually agree with Buyer upon a disposition for such truck loads or barge  
25 loads of coal, all at Seller's cost and risk.

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1           With respect to Shipments which fail to meet the Rejection Limits set forth in § 6.1, the  
2 Parties recognize that segregation of such coal, or its removal from the premises, may not be  
3 reasonably possible; however, at Buyer's option, the Parties shall confer for the purpose of  
4 reaching agreement on an adjustment to the Base Price to be paid for such coal. Where the Parties  
5 agree on an adjustment to the Base Price to be paid for such coal, Buyer has the right to use the  
6 non-conforming Shipment for any purpose for which it could use a conforming Shipment, and  
7 Seller shall not reimburse Buyer for any damages, penalties, costs or charges, including reasonable  
8 attorney's fees, associated with or resulting from the use of the non-conforming Shipment. Where  
9 the Parties fail to agree on an adjustment to the Base Price to be paid for such coal, the senior  
10 officer of each Party shall confer as to the appropriate adjustment to the Base Price to be paid for  
11 such coal. In the event there is no agreement reached by the Parties' senior officers, the appropriate  
12 adjustment shall be settled via arbitration, such arbitrator to be jointly selected by the Parties and  
13 the decision rendered shall be the final and binding settlement of such adjustment. Each Party shall  
14 pay one-half of the arbitrator's fees. Buyer shall have the right to utilize the non-conforming coal  
15 at Buyer's sole risk and expense.

16           Any Shipment with respect to which one or more truck or barge load Shipments that are  
17 rejected because of Debris shall be considered a rejectable Shipment for purposes of § 6.4. Any  
18 Shipment which fails to meet the Rejection Limits set forth in § 6.1 also shall be considered a  
19 rejectable Shipment for purposes of § 6.4, regardless of whether Buyer accepts or rejects said  
20 Shipment.

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1           The remedies set forth herein are in addition to all of Buyer's other remedies under this  
2 Agreement and under applicable law and in equity for Seller's breach of any of its obligations  
3 under this Agreement.

4           If Buyer fails to reject a Shipment of non-conforming coal which it had the right to reject  
5 for failure to meet any or all of the Rejection Limits set forth in § 6.1 or because such Shipment  
6 included truck or barge load Shipments that contained Debris, then such non-conforming coal shall  
7 be deemed accepted by Buyer; however, the quantity Seller is obligated to sell to Buyer under the  
8 Agreement shall be reduced by the amount of each such non-conforming Shipment which is not  
9 rejected. Further, for Shipments containing Debris and where such Shipments are not rejected, the  
10 estimated weight of such Debris shall be deducted from the weight of that Shipment.

11           Seller acknowledges its part in reasonable and workmanlike quality control and as such,  
12 Seller shall not take advantage of Buyer's good faith by delivering coal that is substantially above  
13 or below, as applicable, the Guaranteed Monthly Weighted Averages and the per Shipment  
14 Rejection Limits.

15           § 6.4 Suspension and Termination. If the ton-weighted monthly average of coal fails to  
16 meet any one (1) or more of the individual Guaranteed Monthly Weighted Average specifications  
17 set forth in § 6.1 for any three (3) calendar months in any six (6) calendar month period, or if five  
18 (5) Shipments are rejectable by reason of Debris or failure to meet the Rejection Limits specified  
19 in §6.1 in any consecutive thirty (30) day period, Buyer may, upon written notice delivered in  
20 accordance with Section 12, Notices, suspend future Shipments, except those Shipments which  
21 have already been loaded into trucks or barges prior to the time notice is received. Seller shall,  
22 within ten (10) days after receipt of Buyer's notice, provide Buyer with reasonable assurances that

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1 subsequent deliveries of coal shall not contain Debris and shall meet or exceed the Guaranteed  
2 Monthly Weighted Averages set forth in § 6.1, and that the coal from the Coal Properties thereafter  
3 will comply with all the Rejection Limits set forth in § 6.1. If Seller fails to provide such  
4 assurances within said ten (10) day period, then Buyer, notwithstanding the notice and termination  
5 provisions contained in Section 14, may terminate this Agreement immediately and exercise all its  
6 other rights and remedies under applicable law and in equity for Seller's breach. Buyer's failure  
7 to terminate after the end of such ten (10) day period shall not constitute a waiver for a continuing  
8 default or for any subsequent defaults. If Seller provides such assurances to Buyer's reasonable  
9 satisfaction, Shipments hereunder shall resume, and any tonnage deficiencies resulting from  
10 suspension may be made up at Buyer's sole option. Buyer shall not unreasonably withhold its  
11 acceptance of Seller's assurances, or unreasonably delay resumption of Shipments. If Seller, after  
12 the resumption of Shipments, fails to meet any one (1) or more of the individual Guaranteed  
13 Monthly Weighted Average specifications for any two (2) calendar months within the next one  
14 hundred eighty (180) days or if three (3) Shipments are rejectable within any consecutive thirty  
15 (30) days during such one hundred eighty (180) day period, then Buyer, notwithstanding the notice  
16 and termination provisions contained in § 14, may terminate immediately this Agreement and  
17 exercise all its other rights and remedies under applicable law. The aforementioned one hundred  
18 eighty (180) day period shall commence on the date upon which shipments are resumed.

19 § 6.5 Warranty. SELLER REPRESENTS AND WARRANTS TO BUYER THAT ALL  
20 COAL PROVIDED PURSUANT TO THIS AGREEMENT WILL MEET THE APPLICABLE  
21 SPECIFICATIONS/REQUIREMENTS, AS SPECIFIED IN SECTION 6.1 FOR THE COAL.  
22 EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT AND IN SECTION 6.1,

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1 SELLER HEREBY DISCLAIMS, AND BUYER HEREBY WAIVES, ANY AND ALL  
2 IMPLIED WARRANTIES OF QUALITY, INCLUDING, WITHOUT LIMITATION, ANY  
3 WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

4 **SECTION 7. WEIGHTS, SAMPLING, AND ANALYSIS.**

5 § 7.1 Weights for Truck Delivery. The weight of the coal delivered hereunder by truck  
6 shall be determined on a per Shipment basis by Buyer on the basis of scale weights obtained at the  
7 Truck Delivery Point unless another method is mutually agreed upon by the Parties. Buyer's scales  
8 shall be duly reviewed by an appropriate independent testing agency (such as a professional scale  
9 firm or the Department of Agriculture, Division of Weights and Measures) and maintained in a  
10 condition such that the weights are deemed accurate and reliable so as to be utilized for payment  
11 purposes in accordance with the terms and conditions of this Agreement. Such scales shall be  
12 tested and shall comply with the rules and regulations concerning Weights and Measures for the  
13 Commonwealth of Kentucky and appropriate standards for weighing as set out in the National  
14 Institute of Standards and Technology Handbook 44 for such scales, to ensure accuracy,  
15 repeatability, and reliability. Seller shall have the right, at its expense and upon reasonable notice,  
16 to have the scales checked for accuracy at any reasonable time or frequency. If such scales are  
17 found to be over or under the tolerance range allowable for the scale based on the rules and  
18 regulations concerning Weights and Measures for the Commonwealth of Kentucky and the  
19 National Institute of Standards and Technology Handbook 44, either Party shall pay to the other  
20 any amounts owed due to such inaccuracy for a period not to exceed thirty (30) days or the time  
21 between tests, whichever is shorter. Buyer shall, upon request from Seller, provide adequate and

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1 reasonable data or certifications completed by a third party indicating such scales are operational  
2 and performing at a level appropriate for payment purposes.

3       § 7.2 Weights for Barge Delivery. The weight of the coal delivered hereunder by barge  
4 shall be determined on a per Shipment basis by Seller on the basis of scale or draft weights, as the  
5 case may be, at the Barge Delivery Point, unless another method is mutually agreed upon by the  
6 Parties. Such draft shall be duly performed by an appropriate independent testing agency and  
7 performed in a workmanlike manner pursuant to methodologies for obtaining such that the weights  
8 are deemed accurate and reliable so as to be used for payment purposes in accordance with the  
9 terms and conditions of this Agreement. In the event that Seller utilizes scales for the purpose of  
10 determining the weight of the coal delivered pursuant to this Agreement, such scales shall be duly  
11 and properly maintained and from time-to-time reviewed by a reputable and skilled independent  
12 testing agency. Such independent agency shall verify and certify via physical material test(s) the  
13 scale's accuracy, reliability, and usage for payment purposes. The standards for the determination  
14 of the accuracy and reliability of the coal scale shall be the standards contained in the Weights and  
15 Measures for the State of Kentucky or the National Institute of Standards and Technology  
16 Handbook 44, or superior standards as determined by the testing agency for such scales, to ensure  
17 accuracy and reliability. Buyer shall have the right, at its expense and upon reasonable notice, to  
18 have the draft process or scales checked for accuracy at any reasonable time or frequency. In the  
19 event scales are utilized, if such scales are found to be over or under the tolerance range allowable  
20 for the scale based on the rules and regulations concerning Weights and Measures for the State of  
21 Kentucky or the National Institute of Standards and Technology Handbook 44 or other superior  
22 standard, either Party shall pay to the other any amounts owed due to such inaccuracy for a period

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1 not to exceed thirty (30) days or the time between tests, whichever is shorter. Seller shall, upon  
2 request from Buyer, provide the Buyer adequate and reasonable data or certifications completed  
3 by a third party indicating such scales are operational and performing at a level appropriate for  
4 payment purposes.

5

6       § 7.3 Sampling and Analysis for Truck Delivery. The sampling and analysis of the coal  
7 delivered hereunder shall be performed by Buyer and the results thereof shall be accepted and used  
8 for the quality and characteristics of the coal delivered under this Agreement unless another  
9 method is mutually agreed upon by the Parties. Buyer shall provide analyses from its or its  
10 contractor's laboratory to the Seller at Buyer's expense in accordance with industry-accepted  
11 standards. Samples for analyses: (i) shall be taken by the most current industry-accepted standard  
12 for the mechanical sampling system in place; (ii) shall be acceptable in Seller's reasonable  
13 judgment; (iii) may be composited; and (iv) shall be taken with a frequency and regularity  
14 sufficient to provide reasonably accurate representative samples of the deliveries made hereunder.  
15 Seller acknowledges that it is familiar with the sampling and analysis practices to be utilized  
16 hereunder, and confirms that it is acceptable. Buyer shall notify Seller in writing of any significant  
17 changes in its sampling and analysis practices. Any such changes in sampling and analysis  
18 practices shall, except for industry accepted changes in practices, provide for no less accuracy than  
19 the sampling and analysis practices existing at the time of the execution of this Agreement, unless  
20 the Parties otherwise mutually agree.

21       Each sample taken shall be divided into four (4) parts and put into airtight containers,  
22 properly labeled and sealed. One part shall be used for analysis; one part shall be used as a check



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1 sample, if a Party in its sole judgment determines it is necessary; one part shall be retained until  
2 the twenty-fifth (25<sup>th</sup>) of the month following the month of unloading (the "Disposal Date") and  
3 shall be delivered to Seller for analysis if so requested before the Disposal Date; and one part  
4 ("Referee Sample") shall be retained until the Disposal Date. Buyer shall provide to the other an  
5 electronic or facsimile copy or copies of all analyses within two (2) days of completion.

6 Buyer shall provide a composite of all the analyses for presentation to Seller by the tenth  
7 (10<sup>th</sup>) day of the month following the month of unloading. Seller shall, upon reasonable notice to  
8 Buyer, and subject to the Buyer's then applicable safety policies and procedures, have the right to  
9 have a representative present to observe the sampling and analyses performed. Unless Seller  
10 requests a Referee Sample analysis before the Disposal Date, the analyses of the Buyer shall be  
11 used to determine the quality of the coal delivered hereunder. The Monthly Weighted Averages  
12 shall be determined by utilizing the individual Shipment analyses and the weight of each Shipment.

13 If any dispute arises before the Disposal Date, the retained Referee Sample shall be  
14 submitted for analysis to an independent commercial testing laboratory ("Independent Lab")  
15 mutually chosen by Buyer and Seller. For each coal quality specification in question, a dispute  
16 shall be deemed not to exist and the Buyer's analysis shall prevail and the analysis of the  
17 Independent Lab shall be disregarded, if the analysis of the Independent Lab differs from the  
18 Buyer's analysis by an amount equal to or less than:

- 19 (i) 0.50% moisture  
20 (ii) 0.50% ash on a dry basis  
21 (iii) 100 Btu/lb. on a dry basis  
22 (iv) 0.10% sulfur on a dry basis  
23

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1 For each coal quality specification in question, if the analysis of the Independent Lab  
2 differs from Buyer's analysis by an amount more than the amounts listed above, then the analysis  
3 of the Independent Lab shall prevail and the analysis of Buyer shall be disregarded. The cost of  
4 the analysis made by the Independent Lab shall be borne by the Buyer to the extent that the  
5 Independent Lab's analysis prevails and by the Seller to the extent that the analysis of the Buyer's  
6 lab prevails.

7  
8 § 7.4 Sampling and Analysis for Barge Delivery. The sampling and analysis of the coal  
9 delivered hereunder shall be performed by Seller pursuant to barge delivery and the results thereof  
10 shall be accepted and used for the quality and characteristics of the coal delivered under this  
11 Agreement unless another method is mutually agreed upon by the Parties. Seller shall provide  
12 analyses from its or its contractor's laboratory to the Buyer at the Seller's expense in accordance  
13 with industry-accepted standards. Samples for analyses: (i) shall be taken by the most current  
14 industry-accepted standard for the mechanical sampling system in place; (ii) shall be mutually  
15 acceptable to both Parties; (iii) may be composited; and (iv) shall be taken with a frequency and  
16 regularity sufficient to provide reasonably accurate representative samples of the deliveries made  
17 hereunder. Buyer acknowledges that it is familiar with the sampling and analysis practices to be  
18 utilized hereunder, and confirms that they are acceptable. Seller shall notify Buyer in writing of  
19 any significant changes in their sampling and analysis practices. Any such changes in sampling  
20 and analysis practices shall, except for industry accepted changes in practices, provide for no less  
21 accuracy than the sampling and analysis practices existing at the time of the execution of this  
22 Agreement, unless the Buyer otherwise agrees.

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1 Each sample taken shall be divided into four (4) parts and put into airtight containers,  
2 properly labeled and sealed. One part shall be used for analysis; one part shall be used as a check  
3 sample, if a Party in its sole judgment determines it is necessary; one part shall be retained until  
4 the twenty-fifth (25<sup>th</sup>) of the month following the month of unloading (the "Disposal Date") and  
5 shall be delivered to Buyer for analysis if so requested before the Disposal Date; and one part  
6 ("Referee Sample") shall be retained until the Disposal Date. Seller shall provide to Buyer an  
7 electronic or facsimile copy or copies of all analyses within two (2) days of completion. Seller  
8 shall provide a composite of all the analyses for presentation to Buyer by the tenth (10<sup>th</sup>) day of  
9 the month following the month of unloading. Buyer shall, upon reasonable notice to Seller and  
10 subject to Seller's then applicable safety policies and procedures, have the right to have a  
11 representative present to observe the sampling and analyses performed. Unless Buyer requests a  
12 Referee Sample analysis before the Disposal Date, the analyses of Seller shall be used to determine  
13 the quality of the coal delivered hereunder. The Monthly Weighted Averages shall be determined  
14 by utilizing the individual Shipment analyses and the weight of each Shipment.

15 If any dispute arises before the Disposal Date, the retained Referee Sample shall be  
16 submitted for analysis to an independent commercial testing laboratory ("Independent Lab")  
17 mutually chosen by Buyer and Seller. For each coal quality specification in question, a dispute  
18 shall be deemed not to exist and the sampling Party's analysis shall prevail and the analysis of the  
19 Independent Lab shall be disregarded, if the analysis of the Independent Lab differs from Seller's  
20 analysis by an amount equal to or less than:

- 21 (i) 0.50% moisture
- 22 (ii) 0.50% ash on a dry basis
- 23 (iii) 100 Btu/lb. on a dry basis

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1 (iv) 0.10% sulfur on a dry basis

2  
 3 For each coal quality specification in question, if the analysis of the Independent Lab  
 4 differs from Seller's analysis by an amount more than the amounts listed above, then the analysis  
 5 of the Independent Lab shall prevail and Seller's shall be disregarded. The cost of the analysis  
 6 made by the Independent Lab shall be borne by Seller to the extent that the Independent Lab's  
 7 analysis prevails and by Buyer to the extent that Seller's lab prevails.

8

9 **SECTION 8. PRICE.**

10 § 8.1 Base Price. Except as provided in § 8.2, the base price of the Base Quantity coal to  
 11 be sold and delivered hereunder shall be firm and will be determined by the year in which the coal  
 12 is delivered to the Truck Delivery Point (or scheduled to be delivered) as set forth in Section 3, in  
 13 accordance with the following schedule on the basis of \$/MMBTU Truck Delivery Point and Barge  
 14 Delivery Point (the "Base Price").

15

	BASE QUANTITY TONNAGE	
	BASE PRICE F.O.B. DELIVERY POINT (\$/MMBTU)	
<u>YEAR</u>	<u>TRUCK DELIVERY POINT</u>	<u>BARGE DELIVERY POINT</u>
19 2022	\$1.8164	Not Applicable
20 2023	\$1.8336	Not Applicable
21 2023 Make-Up Tons	\$1.8336	\$1.8336
22 2024	\$1.8504	\$1.8504

23

24 Notwithstanding the foregoing, the Base Price for the Base Quantity of coal delivered at  
 25 the Barge Delivery Point, an amount of \$3.82 per ton will be added to the Base Price.

26

27 § 8.2 Make-Up Tons Pricing. Notwithstanding the foregoing, the Base Price for any Make-  
 28 Up Tons (as defined in § 3.3 herein) shall be based on the Base Price for the calendar year in which

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1 such Make-Up Tons should have been delivered and not the Base Price in the Make-Up Year (as  
2 defined in § 3.3 herein).

3       § 8.3 Price Adjustments for Changes in Governmental Impositions. Except as provided in  
4 clauses (c) and (d) of this Section, the Base Price includes all Governmental Impositions in effect  
5 as of July 28, 2021. The Base Price shall be subject to adjustment pursuant to this § 8.3 only in  
6 the event that the requesting Party can clearly demonstrate that: (a) new, industry-wide federal or  
7 state statutes, regulations, or other governmental impositions affecting the industry and the coal to  
8 be supplied hereunder or the production thereof, including but not limited to tax increases or  
9 decreases (other than taxes measured by income), (b) amendments, modifications, or changes to  
10 the text, interpretation, application, or enforcement (excluding changes in frequency, rigor, or  
11 thoroughness of enforcement) of any existing generally-applicable federal or state statutes,  
12 regulations, or other governmental impositions that occur after the execution date, (c) any part(s)  
13 of the Federal Mine Safety and Health Administration's Respirable Dust Rule, made effective May  
14 1, 2014, are implemented on or after July 28, 2021, or (d) any increase(s) or extension of the black  
15 lung tax that is implemented on or after July 28, 2021, but only to the extent the increase or  
16 extension results in a black lung tax above fifty cents (\$0.50) per ton (all such requirements  
17 described in clauses (a), (b), (c), and (d) are collectively a "Requirement"), causes Seller's direct  
18 cost of providing coal to Buyer under this Agreement to increase or decrease (generally an  
19 "imposition"). The black lung tax, currently at \$1.10 per ton, is scheduled to be reduced at the  
20 end of 2021 to \$0.50 per ton, and, for the avoidance of doubt, this \$0.60 per ton reduction shall  
21 not constitute a Governmental Imposition per this § 8.3. The Parties acknowledge that although  
22 an Imposition may not be imposed on a per ton basis, Seller shall allocate such direct costs in this

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1 manner. In the event a Party desires to obtain a price adjustment based on an Imposition, the  
2 affected Party shall promptly notify the other Party in writing of the Requirement or potential  
3 Requirement, setting forth the Requirement, specific legal basis for the Imposition, the anticipated  
4 or actual financial impact of the Imposition, and the anticipated or actual effective date. Either  
5 Buyer or Seller may request a Base Price adjustment, which shall be comprised of no more than  
6 the actual costs directly associated with the effect of such changes on the cost of producing the  
7 coal to be supplied hereunder. Additionally, an Imposition adjustment shall only be made  
8 hereunder if the price adjustment is allocated evenly to all coal produced by Seller, including all  
9 coal that is produced from the Coal Properties, so that Buyer is allocated only its proportionate  
10 share of such Imposition, and the Base Price shall likewise be decreased for any savings resulting  
11 from any Requirement or Imposition allocated on such proportionate basis. There shall be no  
12 change to the Base Price based on reductions or loss of production or production capacity as a  
13 result of Imposition.

14 Notwithstanding the above, there shall be no price adjustment based on the reauthorization  
15 of a law, regulation, tax, or other Requirement, or if a law, regulation, tax, or other Requirement  
16 is replaced with a similar Requirement, except to the extent of Buyer's proportional share of the  
17 net effect on Seller's cost of producing coal to be supplied hereunder, compared to the similar  
18 Requirement in effect or applicable at the time this Agreement is executed, and except to the extent  
19 the black lung tax is above \$.50/ton.

20 By way of example, and not of limitation, an Imposition that requires the purchase of  
21 special or additional equipment shall be prorated over the number of years of useful life of the

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1 equipment and over the total tons in any year during the useful life of the equipment. In such a  
2 case, the change in the Base Price would not exceed the per-ton prorated cost of the equipment.

3 After Seller has determined the actual, direct cost impact of any Imposition, Seller shall  
4 notify Buyer in writing of the amount and effective date of any claimed adjustment to the Base  
5 Price as a result of one or more Impositions and shall furnish Buyer with the specific legal basis  
6 for Imposition, and accurate and detailed computations and data reasonably necessary to  
7 substantiate the claimed adjustment. Buyer shall have the right to inspect all books and records of  
8 Seller relevant to the claimed adjustment. Buyer shall notify Seller of any disagreement Buyer has  
9 with the claimed adjustment within a reasonable time after receipt of such notice and computations,  
10 taking into account any audits or requests for additional information by Buyer. It is Seller's  
11 obligation to ensure that it provides Notice of such Imposition decrease(s) and that they are  
12 presented as a Base Price reduction to Buyer.

13 If the amount of the actual or anticipated Impositions claimed in any particular calendar  
14 year exceeds sixty cents (\$0.60) per ton on a cumulative basis for such particular calendar year,  
15 Buyer may terminate this Agreement upon not less than thirty (30) days written notice to Seller  
16 without any further liability other than that which has accrued pursuant to the Agreement prior to  
17 the termination date. Upon receipt of such written notice, Seller may elect, by forwarding written  
18 notice to Buyer within ten (10) days after receiving Buyer's notice of termination, to reduce the  
19 Imposition, or to withdraw the Imposition(s) for the particular calendar year. In the event Seller  
20 makes an election to withdraw the Imposition(s) and provides written notice of such withdrawal,  
21 then this Agreement shall continue in full force and effect. In the event Seller elects to reduce the

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1 amount of the Imposition(s), Buyer shall have ten (10) days to accept such reduced Imposition(s)  
 2 by written notice or to provide notice of termination based on rejection of the final Imposition(s).

3 **§ 8.4 Trucking Cost and Diesel Fuel Adjustment.** The cost of trucking shall be:

4	<u>Period</u>	<u>Cost of Trucking (\$ per ton)</u>
5	January 1 - December 31, 2022	\$3.61
6	January 1 - December 31, 2023	\$3.71
7	January 1 - December 31, 2024	\$3.82
8		

9 Effective January 1, 2022, each month the truck rate shall be adjusted to reflect changes in diesel  
 10 fuel costs. Each change of ten cents (\$0.10) per gallon from the base diesel fuel cost of three  
 11 dollars (\$3.00) per gallon shall result in the truck rate being increased or decreased by \$0.033 per  
 12 ton. In no event shall the truck rate be adjusted to less than the current Period Cost of Trucking.  
 13 The adjusted diesel fuel cost shall be determined by averaging all of the Seller's or Seller's  
 14 contractor's diesel fuel purchases for the second month preceding the month for which the fuel  
 15 adjustment is to be applied. For example, the adjusted diesel fuel cost for the month of November  
 16 2022 shall determine the fuel adjustment for the month of January 2023. Seller shall provide all  
 17 documentation for verification of Seller's trucking diesel fuel adjustment.

18  
 19 **§ 8.5 Barge Transportation Costs.** It is the intent of the Parties that Seller will be  
 20 responsible for all reasonable and documented costs incurred by either Party to deliver coal under  
 21 this Agreement from the Barge Delivery Point to Big Rivers' D.B. Wilson plant (the "Barge  
 22 Transportation Costs"). Barge Transportation Costs shall include the daily charter costs, fuel and  
 23 lube costs, and inspection costs charged to Buyer for the Towboat(s) and barges and routine barge  
 24 maintenance costs charged to Buyer, used to deliver coal from the Barge Delivery Point to Buyer's



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1 D.B. Wilson plant; Barge Transportation Costs shall also include all fees, penalties, and charges  
2 for damages, charged to Buyer, but only to the extent such fees, penalties, or charges for damages  
3 are caused by Seller's or Seller's contractors or agents. Buyer will invoice Seller monthly for the  
4 Barge Delivery Costs. Buyer may offset any amounts due to it from Seller under this Agreement  
5 against any amounts due Seller.

6

7 § 8.6 Payment Calculation. Payment shall be based solely upon the tonnage and BTU/lb.  
8 received pursuant to the terms of Section 6 QUALITY, Section 7. WEIGHTS, SAMPLING  
9 AND ANALYSIS, and this Section 8 PRICE. If there are any adjustments pursuant to Section  
10 6. QUALITY, such adjustments shall apply as a credit or debit, as applicable, to amounts owed  
11 Seller by Buyer for the month the coal was unloaded.

12

**SECTION 9. INVOICES, BILLING, AND PAYMENT.**

13

§ 9.1 Invoicing Address. Invoices will be sent to Buyer at the following address:

14

Big Rivers Electric Corporation  
15 710 West Second Street (physical zip code 42301)  
16 P.O. Box 20015  
17 Owensboro, Kentucky 42304  
18 Attn.: Fuels Accounting  
19 Phone: (270) 844-6160  
20 Email: katherine.risley@bigrivers.com

21

22

Payment inquiries to:

23

24

American Consolidated Natural Resources, Inc.  
25 Accounts Receivable Department  
26 46226 National Road  
27 St. Clairsville, OH 43950  
28 Phone: (740) 338-3100  
29 Email: arinfo@acnrinc.com

30

30

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1  
2           § 9.2 Payment Procedures for Coal Shipments. For all coal delivered to the Truck Delivery  
3 Point and Barge Delivery Point, pursuant to Section 5 hereof, between the first (1<sup>st</sup>) day of the  
4 calendar month and the fifteenth (15<sup>th</sup>) day of the calendar month, Seller shall invoice Buyer by  
5 the 20<sup>th</sup> of the month, based upon the Base Price on a dollar per MMBTU basis as calculated by  
6 the as-received weighted-average BTU/lb. analysis from the 1<sup>st</sup> day of the month through the 15<sup>th</sup>  
7 day of the month. Buyer shall make partial payment for the amount owed for the coal based on  
8 the as-received BTU/lb. analysis through the fifteenth (15<sup>th</sup>) day of the month by the twenty-fifth  
9 (25<sup>th</sup>) day of the month, except that, if the twenty-fifth (25<sup>th</sup>) day of the month is not a Business  
10 Day, payment shall be made on the next Business Day. "Business Day", as such term is used in  
11 this Agreement, shall mean a day on which Federal Reserve member banks in New York City,  
12 New York are open for business.

13           For all coal delivered to the Truck Delivery Point and Barge Delivery Point, between the  
14 sixteenth (16<sup>th</sup>) day of the calendar month and the last day of the calendar month, Seller shall  
15 invoice Buyer by the fifth (5<sup>th</sup>) day of the following month, based upon the Base Price on a dollar  
16 per MMBTU basis as calculated by the as-received weighted-average BTU/lb. analysis from the  
17 sixteenth (16<sup>th</sup>) day of the month through the end of the calendar month. Buyer shall make a  
18 payment for the amount owed for such coal by the tenth (10<sup>th</sup>) day of the month following the  
19 month of delivery at the Truck Delivery Point and the Barge Delivery Point, except that, if the  
20 tenth (10<sup>th</sup>) day of the month is not a Business Day, payment shall be made on the next Business  
21 Day. Also, by the tenth (10<sup>th</sup>) day of the month following the month of delivery at the Truck  
22 Delivery Point and the Barge Delivery Point, a reconciliation of amounts paid via partial payment

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1 and amounts owed for all coal delivered at the Truck Delivery Point and Barge Delivery Point  
2 during said month shall be made including any applicable discounts or other adjustments provided  
3 herein, except that, if the tenth (10<sup>th</sup>) day of the month is not a Business Day, such reconciliation  
4 shall be made on the next Business Day.

5 ACNR shall invoice coal that it delivers at the Truck Delivery Point and Barge Delivery  
6 Point. Seller shall provide Buyer all needed account and wiring information to make payments  
7 and Buyer shall provide payment to each entity using the account information as provided by  
8 Seller.

9 Buyer shall provide to Seller the monthly Barge Transportation Costs invoices with the  
10 supporting documentation as defined in § 8.5, for the Barge Transportation Costs. Seller shall pay  
11 Buyer within fifteen (15) days after receipt of each Buyer's Barge Transportation Costs invoice.

12

13 § 9.3 Withholding. Buyer shall have the right to withhold from payment of any billing or  
14 billings (i) any sums which it is not able in good faith to verify or which it otherwise in good faith  
15 disputes; (ii) any damages resulting from any breach of this Agreement by Seller; and (iii) any  
16 amounts owed to Buyer from Seller pursuant to this Agreement; provided that all undisputed  
17 amounts shall be paid as provided in § 9.2. Buyer shall notify Seller promptly in writing of any  
18 such issue, stating the basis of its claim and the amount it intends to withhold.

19 Payment by Buyer, whether knowing or inadvertent, of any amount in dispute shall not be  
20 deemed a waiver of any claims or rights by Buyer with respect to any disputed amounts or  
21 payments made. Any disputed amounts withheld by Buyer that are later found to have been  
22 withheld improperly, other than disputed amounts resulting from Seller's errors or lack of

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1 documentation, shall be paid within five (5) business days after such determination, and such  
2 unpaid amount shall be subject to interest at four percent (4.0%) per annum from the date when  
3 the payment was originally due until such time as the payment is made in full to Seller.

4 **SECTION 10. FORCE MAJEURE.**

5 § 10.1 General Force Majeure. Except as otherwise provided herein, if either Party hereto  
6 is delayed in or prevented from performing any of its obligations under this Agreement due to acts  
7 of God, war, riots, civil insurrection, acts of the public enemy, terrorism, nuclear disasters, strikes,  
8 lockouts, damage to mines or plants, breakdown of equipment or facilities, fires, explosions,  
9 floods, earthquakes, damage to or destruction of the mine or preparation plant, or unanticipated  
10 geologic conditions which could not have been discovered by the exercise of reasonable  
11 engineering prudence, then the obligations of both Parties hereto shall be suspended to the extent  
12 made necessary by such event; provided that the affected Party gives prompt oral notice to the  
13 other Party followed by written notification not later than ten (10) days after such commencement  
14 or occurrence. The written notification for force majeure events shall also describe the nature and  
15 probable duration of the force majeure event. Failure to give either of such notices, or the failure  
16 to furnish in the written notice information concerning the nature and probable duration of the  
17 force majeure event, shall be deemed a waiver of the affected Party's rights under this Section 10.  
18 The Party declaring a force majeure event shall exercise due diligence to avoid the force majeure  
19 event or shorten its duration and will keep the other Party advised as to the continuance of the  
20 force majeure event. In the event of force majeure, delivery of the affected quantity of coal shall  
21 be made up at the sole discretion of the non-declaring Party based upon a reasonable delivery  
22 schedule.

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1 Buyer reserves the right to purchase replacement coal from other sources during the  
2 occurrence of a force majeure event affecting Seller. Seller shall have the right to sell coal which  
3 Buyer is unable to accept during an occurrence of force majeure event affecting Buyer.

4 In the event that a situation of force majeure continues for a period exceeding thirty (30)  
5 days, then the Party not claiming force majeure may elect to terminate this Agreement by giving  
6 written notice to the other Party. In the event of such termination, neither Party shall have any  
7 further liability to the other except for those obligations or liabilities which may have accrued with  
8 respect to performance or defaults prior to said termination.

9 **§10.2 Environmental Law Force Majeure.** If a Party concludes that any new environmental  
10 law is enacted or new rule or regulation is promulgated (including without limitation, an  
11 amendment to or a new interpretation of an existing law, rule, or regulation) after the Effective  
12 Date of this Agreement which becomes effective during the Term of this Agreement, which makes  
13 it impossible, commercially impracticable or uneconomical for Seller to produce or deliver or  
14 Buyer to utilize this or like kind and quality coal which thereafter would be delivered under this  
15 Agreement, such Party shall so notify the other Party. Thereupon, Buyer and Seller shall promptly  
16 consider whether corrective actions can be taken in the mining and preparation of the coal at  
17 Seller's mine(s) and/or in the handling and utilization of the coal at Buyer's generating station.

18 If, in Buyer's sole judgment, any such actions will not, without unreasonable expense to  
19 Buyer, make it possible, commercially practicable or economical for Buyer to use the coal which  
20 would be delivered hereunder without violating any applicable law, regulation, policy or order,  
21 Buyer shall have the right, upon the later of sixty (60) days' notice to Seller or the effective date

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1 of such restriction, to terminate this Agreement without further obligation hereunder on the part of  
2 either Party except for obligations incurred prior to the time of such termination.

3 If, in Seller's sole judgment, any such actions will not, without unreasonable expense to  
4 Seller, make it possible, commercially practicable, and economical for Seller to produce and  
5 deliver the coal which would otherwise be delivered hereunder without violating any applicable  
6 law, regulation, policy, or order, Seller shall have the right, upon the later of sixty (60) days' notice  
7 to Buyer or the effective date of such restriction, to terminate this Agreement without further  
8 obligation hereunder on the part of either Party except for obligations incurred prior to the time of  
9 such termination.

10 **SECTION 11. IDLE NOTICE.** In the event that Buyer intends to idle or otherwise cease  
11 operating any generating units or stations utilized by it within its system, Buyer shall provide six  
12 (6) months' written notice of such event (the "Idle Notice") to Seller to include the date of such  
13 actual or planned idling (the "Idle Date"). From and after the Idle Notice and determination of the  
14 Idle Date provided to Seller, Buyer shall have no other further obligation to accept delivery of any  
15 remaining Quantity under this Agreement, except for Shipments scheduled up to the Idle Date.  
16 Buyer may terminate this Agreement following the Idle Notice and Idle Date as provided herein  
17 without any further liability for either Party other than that which has accrued pursuant to the  
18 Agreement prior to the Idle Date, including, without limitation, such payments, fees, costs,  
19 expenses, and other charges that are outstanding or that accrue prior to the Idle Date.

20 **SECTION 12. NOTICES.**

21 § 12.1 Form and Place of Notice. Any official notice, request for approval or other  
22 document required or permitted to be given under this Agreement shall be in writing, unless

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1 otherwise provided herein, and shall be deemed to have been sufficiently given when delivered in  
2 person, transmitted by facsimile, email, or other electronic media, delivered to an established mail  
3 service for same day or overnight delivery, or dispatched in the United States mail, postage  
4 prepaid, for mailing by first class, certified, or registered mail, return receipt requested, and  
5 addressed as follows:

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**If to Buyer:** Big Rivers Electric Corporation  
710 West Second Street (physical zip code 42301)  
P.O. Box 20015  
Owensboro, Kentucky 42304  
Attn: COO  
Email: nathanial.berry@bigrivers.com

With a copy to:

Big Rivers Electric Corporation  
710 West Second Street (physical zip code 42301)  
P.O. Box 20015  
Owensboro, Kentucky 42304 Attn: Manager Fuels Procurement  
Email: vicky.payne@bigrivers.com

**If to Seller:** ACNR Coal Sales, Inc.  
Attn: Todd Adkins  
46226 National Road  
St. Clairsville, Ohio 43950  
Attn: Vice President Marketing and Sales  
Phone: (614) 440-9239  
Fax: (740) 338-3405  
Email: toddadkins@acnrinc.com

With a copies to:

American Consolidated Natural Resources, Inc.  
General Counsel  
46226 National Road  
St. Clairsville, OH 43950  
Phone: (740) 338-3100  
Fax: (740) 338-3405

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1 Email: legal@acnrinc.com  
2  
3 ACNR Coal Sales, Inc.  
4 Coal Sales Department  
5 46226 National Road  
6 St. Clairsville, OH 43950  
7 Phone: (740) 338-3100  
8 Email: acnrcoalsales@acnrinc.com  
9

10 § 12.2 Change of Person or Address. Any Party may change the persons or addresses  
11 specified above upon giving written notice to the other Party of such change.

12 § 12.3 Electronic Data Transmittal. Seller hereby agrees, at Seller's cost, to electronically  
13 transmit shipping notices and/or other data to Buyer in a format acceptable to and established by  
14 Buyer upon Buyer's request. Buyer shall provide Seller with the reasonable appropriate format  
15 and will inform Seller as to the electronic data transmission requirements at the appropriate time.

16 **SECTION 13. INDEMNITY AND INSURANCE.**

17 § 13.1 Indemnity. Seller agrees to indemnify and save harmless Buyer, its officers,  
18 directors, employees, and representatives from any responsibility and liability for any and all  
19 claims, demands, costs, charges, losses, or legal actions for personal injuries, including death and  
20 property damage or pollution (including reasonable outside attorney's fees), but not including  
21 Buyer's losses resulting from indemnification obligations hereunder ("Buyer's Losses"): (i) due  
22 to any failure of Seller or its affiliates, or any owner or operator of the Coal Properties, their  
23 respective employees, agents, representatives, contractors or subcontractors, to comply with any  
24 laws, regulations, or ordinances, relative to Seller's performance of this Agreement, or (ii) due to  
25 the acts or omissions of Seller or its affiliates, or any owner or operator of the Coal Properties,  
26 their respective employees, agents, representatives, contractors, or subcontractors in relation to the



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1 performance of this Agreement. Notwithstanding the foregoing, Seller shall not be liable or have  
2 any obligation to indemnify Buyer for Buyer's Losses arising out of or resulting from Buyer's  
3 negligence, willful misconduct or breach of this Agreement.

4 Buyer agrees to indemnify and save harmless Seller, its officers, directors, employees and  
5 representatives from any responsibility and liability for any and all claims, demands, costs,  
6 charges, losses, or legal actions for personal injuries, including death and property damage  
7 (including reasonable outside attorney's fees), but not including Seller's losses resulting from  
8 indemnification obligations hereunder ("Seller's Losses"): (i) due to any failure of Buyer, its  
9 employees, agents, representatives, contractors, or subcontractors, to comply with any laws,  
10 regulations, or ordinances, relative to Buyer's performance of this Agreement, or (ii) due to the  
11 acts or omissions of Buyer in relation to the performance of this Agreement. Notwithstanding the  
12 foregoing, Buyer shall not be liable or have any obligation to indemnify Seller for Seller's Losses  
13 arising out of or resulting from Seller's negligence, willful misconduct or breach of this  
14 Agreement.

15 § 13.2 Insurance. In addition to any other insurance coverage required by this Agreement,  
16 Seller agrees to carry insurance coverage with minimum limits as follows. Further, Seller shall  
17 require that any owner or operator of the Coal Properties procure and maintain insurance coverage  
18 of the type set forth below with coverage limits not less than the limits set forth below.

19 (a) Commercial General Liability, including Completed Operations and Contractual  
20 Liability, \$2,000,000 single limit liability.

21 (b) Automobile Liability, \$1,000,000 single limit liability.

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1 (c) In addition, Seller shall carry umbrella liability insurance covering the foregoing perils  
2 in the amount of \$10,000,000 for any one occurrence and in the aggregate.

3 (d) Workers' Compensation and Employer's Liability with statutory limits.

4 If any of the above policies are written on a claims-made basis, then the retroactive date of  
5 the policy or policies will be no later than the Effective Date of this Agreement. Within fifteen  
6 (15) days after the execution of this Agreement, Certificates of Insurance satisfactory in form to  
7 Buyer and signed by Seller's insurer shall be supplied by Seller to Buyer evidencing that the above  
8 insurance is in force and that not less than thirty (30) calendar days' written notice will be given  
9 to Buyer prior to any cancellation or material reduction in coverage under the policies. Seller shall  
10 cause its insurer to waive all subrogation rights against Buyer respecting all losses or claims arising  
11 from performance hereunder. Evidence of such waiver satisfactory in form and substance to Buyer  
12 shall be exhibited in the Certificate of Insurance mentioned above. Seller's liability shall not be  
13 limited to its insurance coverage.

14 **SECTION 14. TERMINATION FOR DEFAULT.**

15 If either Party hereto commits a material breach of any of its obligations under this  
16 Agreement at any time, including, but not limited to, a breach of a representation or warranty set  
17 forth herein, then the other Party may give written notice describing such breach ("Notice of  
18 Default"). If such material breach is not curable or the breaching Party fails to cure such material  
19 breach within thirty (30) days following receipt of the Notice of Default then, at the option of the  
20 non-breaching Party, this Agreement shall terminate in addition to all the other rights and remedies  
21 available to the non-breaching Party under this Agreement and at law and in equity.  
22 Notwithstanding the foregoing, Buyer may terminate this Agreement pursuant to the provisions of

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1 § 6.4 and if Buyer elects to terminate this Agreement pursuant to the provisions of § 6.4, Buyer  
2 shall not be required to comply with the provisions of this Section 14.

3 **SECTION 15. TAXES, DUTIES, AND FEES.**

4 Seller shall pay when due, and the price set forth in Section 8 of this Agreement shall be  
5 inclusive of, all taxes, duties, fees, royalties and other assessments of whatever nature imposed by  
6 governmental authorities relating to the mining, beneficiation, production, sale, loading, and  
7 delivery of coal to Buyer or in any way accrued or levied at or prior to the transfer of title to the  
8 coal to Buyer, and including, without limitation, all severance taxes, royalties, black lung fees,  
9 reclamation fees, and other costs, charges, and liabilities. Buyer shall be solely responsible for all  
10 taxes, duties, fees, and other assessments relating to the coal accrued or levied after the transfer of  
11 title to the coal to Buyer with respect to the transactions contemplated under this Agreement.

12 **SECTION 16. DOCUMENTATION AND RIGHT OF AUDIT.**

13 Buyer and Seller shall maintain all records and accounts pertaining to payments, quantities,  
14 quality analyses, and source for all coal supplied under this Agreement for a period lasting through  
15 the Term of this Agreement and for two (2) years thereafter. Buyer or Seller, as applicable, and/or  
16 their designated representatives (including, but not limited to its agents, auditors, consultants, and  
17 engineers), upon reasonable advance notice to the other Party and during the other Party's normal  
18 working hours, shall be granted by the other Party access to and shall be permitted to inspect (i)  
19 the mine or mines producing coal for delivery under this Agreement, (ii) all support facilities  
20 (including, but not limited to coal washing facilities, preparation plants, and load-out facilities),  
21 (iii) Buyer's Plant, unloading facilities, scales, sampling system(s), and stockpiles, and (iv) records  
22 directly related to the production, weighing, sampling, analysis, or delivery of coal under this

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1 Agreement; provided, however, that the requesting Party shall be required to comply with the other  
2 Party's then applicable safety policies and procedures. Such audit shall be at the requesting Party's  
3 risk and expense during the Term of this Agreement and for two (2) years thereafter. The  
4 requesting Party shall be responsible for all costs associated with the requesting Party's or the  
5 requesting Party's designated representative's travel.

6 **SECTION 17. COAL PROPERTIES AND DELIVERY POINT INSPECTIONS.**

7 Buyer and Seller, and their representatives, shall have the right upon reasonable advance  
8 notice, but not the obligation, at all reasonable times and at their own risk and expense to inspect  
9 the Coal Properties, Truck Delivery Point, Barge Delivery Point, and generation station including  
10 the loading and unloading facilities, scales, sampling system(s), wash plant facilities, and mining  
11 equipment for conformance with this Agreement. Seller and Buyer shall undertake reasonable  
12 care and precautions to prevent personal injuries to any representatives, agents, or employees of  
13 either Party (collectively, "Visitors") who inspect the Coal Properties, Truck Delivery Point, Barge  
14 Delivery Point, and/or generation station. Any such Visitors shall comply with Seller's or Buyer's  
15 then applicable regulations and rules regarding conduct on the work site, made known to Visitors  
16 prior to entry, as well as safety measures mandated by state or federal rules, regulations, and laws.

17 **SECTION 18. MISCELLANEOUS.**

18 § 18.1 Applicable Law. This Agreement shall be construed in accordance with the laws of  
19 the Commonwealth of Kentucky, and all questions of performance of obligations hereunder shall  
20 be determined in accordance with such laws, without regard to choice of law principles. The  
21 Parties agree that all actions will be brought in the Commonwealth of Kentucky, and the Parties  
22 hereby waive any objections to venue for any such action.

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1           § 18.2 Headings. The paragraph headings appearing in this Agreement are for convenience  
2 only and shall not affect the meaning or interpretation of this Agreement.

3           § 18.3 Waiver. The failure of either Party to insist on strict performance of any provision  
4 of this Agreement, or to take advantage of any rights hereunder, shall not be construed as a waiver  
5 of such provision or right.

6           § 18.4 Remedies Cumulative. Remedies provided under this Agreement shall be  
7 cumulative and in addition to other remedies provided under this Agreement or by law or in equity.

8           § 18.5 Severability. If any provision of this Agreement is found contrary to law or  
9 unenforceable by any court of law, the remaining provisions shall be severable and enforceable in  
10 accordance with their terms, unless such unlawful or unenforceable provision is material to the  
11 transactions contemplated hereby, in which case the Parties shall negotiate in good faith a  
12 substitute provision.

13           § 18.6 Binding Effect. This Agreement shall bind and inure to the benefit of the Parties  
14 and their successors and assigns.

15           § 18.7 Assignment. Neither Party may assign this Agreement or any rights or obligations  
16 hereunder without the prior written consent of the other Party. Notwithstanding the foregoing  
17 either Party may, without need of consent of the other Party (and without relieving itself from  
18 liability hereunder), (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts,  
19 revenues or proceeds hereof in connection with any financing or other financial arrangements; (b)  
20 transfer or assign this Agreement to an Affiliate to such Party; or (c) transfer or assign this  
21 Agreement to any person or entity succeeding to all or substantially all of the assets of such Party  
22 by way of merger or reorganization; provided, however, that in each such case any such assignee

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1 shall agree in writing to be bound by the terms and conditions hereof and that no such assignment  
2 shall in any way relieve the assignor from liability or full performance under this Agreement.  
3 "Affiliate" means, with respect to any entity, any other entity (other than an individual) that,  
4 directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under  
5 common control with, such entity. For this purpose, "control" means the direct or indirect  
6 ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests  
7 having ordinary voting power. Any attempt to assign this Agreement other than with the required  
8 consent hereunder shall be null and void.

9 § 18.8 Entire Agreement. This Agreement contains the entire agreement between the  
10 Parties as to the subject matter hereof, and there are no representations, understandings, or  
11 agreements, oral or written, which are not included herein.

12 § 18.9 Amendments. Except as otherwise provided herein, this Agreement may not be  
13 amended, supplemented or otherwise modified except by written instrument signed by both Parties  
14 hereto.

15 § 18.10 Brokers. Seller hereby indemnifies and holds Buyer harmless from all losses,  
16 costs, demands, and expenses Buyer may incur in connection with claims made against Buyer by  
17 any brokers who have been engaged by Seller with respect to this Agreement.

18 § 18.11 Counterparts. This Coal Supply Agreement may be executed and conveyed to the  
19 other Party by electronic means in any number of counterparts, each executed counterpart  
20 constituting as an original but altogether only one Coal Supply Agreement.

21 **SECTION 19. CONFIDENTIALITY.**  
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1            Seller and Buyer agree to maintain in strict confidence the terms and conditions of this  
2 Agreement and any information or data relating hereto exchanged or obtained by the Parties during  
3 negotiation and performance of this Agreement. Neither Buyer nor Seller shall disclose any of the  
4 terms and conditions hereof to any third party (except (i) to affiliates of Seller or Buyer or (ii) to  
5 Buyer's or Seller's lenders, legal counsel, accountants, or consultants (such external service  
6 providers shall be bound by confidentiality statements of a similar nature as this Agreement))  
7 without the prior written consent of the other Party, except where such disclosure may be required  
8 by law or in connection with a judicial or administrative proceeding or filing before courts,  
9 regulatory bodies, or agencies such as the Kentucky Public Service Commission; provided,  
10 however, Buyer shall, where Buyer is legally permitted to do so, give prompt notice of such  
11 judicial or administrative proceeding to Seller so that Seller may either promptly seek an  
12 appropriate protective order and/or promptly waive compliance. The obligations of Buyer and  
13 Seller arising under this Confidentiality Section shall continue for a period of two (2) years  
14 following termination or expiration of this Agreement.

15

16            **SECTION 20. ETHICAL DEALING.**

17            Each Party represents and warrants that it has not given or received and shall not give or  
18 receive any commission, payment, kickback, secret rebate or other thing of value to or from any  
19 employee or agent of the other Party or to any supplier of services in connection with this  
20 Agreement. Each Party acknowledges that the giving or receiving of any such commission,  
21 payment, kickback, secret rebate or other thing of value constitutes a breach of ethical standards,

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1 is potentially violative of applicable law and may result in immediate termination of this and other  
2 outstanding agreements between the Parties.

3 IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed  
4 as of the date first above written.

5  
6 **BIG RIVERS ELECTRIC CORPORATION**

**ACNR EDAL SALES, INC.**

7  
8 By: Don Gulley  
9 Donald Gulley

By: [Signature]  
Robert D. Moore

10  
11 Title: President and Chief Executive Officer

Title: President

12 Date: 4/16/2024

13 Date: 4/17/24

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MB