



**EAST KENTUCKY POWER COOPERATIVE  
FUEL DEPARTMENT**

PURCHASE ORDER  
**NO. 51533**

This number must appear on all  
invoices, shipping documents,  
and correspondence.

<b>To:</b> Consolidation Coal Company("Seller")  46226 National Road St. Clairsville, Ohio 43950		<b>Purchaser:</b> East Kentucky Power Cooperative, Inc. ("Buyer")  <b>Inquiries to:</b> Attention: David Bonarigo P. O. Box 707 Winchester, Kentucky 40392-0707	
<b>Vendor No. 8782 Must Appear On All Correspondence</b>		<b>Phone #:</b> 740-338-3100 <b>State Permit #:</b> U102591	
<b>Deliver To:</b> East Kentucky Power Cooperative, Inc. Spurlock Power Station Route 8 Maysville, KY 41056 (the "Station")		<b>MSHA #:</b> 4601436 <b>Severance Tax #:</b> 2292-4383 <b>Mine Name/Type:</b> Ohio County Mine/Underground <b>County/State:</b> Marshall County, WV <b>Producer/Broker:</b> Producer	
Purchase Order Date February 7, 2018	Terms See Below and Attached Terms and Conditions	F. O. B. Barge	Delivery Ingram Barge Company

This purchase order (the "Purchase Order") binds Seller to ship and sell the following coal to Buyer, who will accept and pay for the following coal at the Spurlock Power Station Unit Nos. 1 and 2, Charleston Bottoms, Kentucky, under the following terms and conditions:

**Term:** Deliveries shall commence on February 7, 2018, and end on April 30, 2018, SUBJECT HOWEVER, to the rights of the parties as set forth herein. Furthermore, the parties acknowledge that Buyer is testing the subject coal for use in Unit Nos. 1 and 2 at Spurlock Power Station. Buyer reserves the right to cancel this Purchase Order at any time and for any reason.

**Quantity:** Total of up to 75,000 tons (2,000 pounds per ton), approximately 25,000 tons per month. Failure to deliver approximate tonnage called for above, not counting rejected tonnage, shall permit Buyer to recover either (1) cover damages or (2) the difference between the Price called for herein and market price, at Buyer's discretion. Buyer shall have no obligation to purchase more than the tonnage called for above.

**Size:** The coal shall be crushed to a maximum of 2" lumps with no intermediate sizes removed and shall be washed and substantially free of impurities and foreign matter. All of said coal shall not contain more than fifty percent (50%) fines, one-fourth inch and smaller.

**Not Subject to Kentucky Sales or Use Tax.**

"The Equal Employment Opportunity Clause at 41 CFR 60-1.4 (a) and the Affirmative Action Clauses at 41 CFR 60-250.5 and 60-741.5 are hereby incorporated by reference and made a part of this Purchase Order as though fully set forth herein."

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**Quality:** Coal sold hereunder shall meet the following specifications on an “as received” basis:

<b>Quality Specifications</b>	<b>Guaranteed Monthly Weighted Average</b>	<b>Rejection Limits (per barge)</b>
Btu/lb.	Minimum 12,500	<11,000
Ash	Maximum 10.5%	>11.0%
Moisture	Maximum 6.75%	>15.0%
Sulfur Dioxide	Maximum 6.5 lbs./MMBtu	> 7.0 lbs./MMBtu

$$\text{Sulfur Dioxide} = \frac{\text{Percent Sulfur} \times 20,000}{\text{Btu/lb.}}$$

Grindability shall be a minimum of 45 on the Hardgrove Scale.

The Guaranteed Monthly Weighted Average Minimum Ash Softening Temperature in (Reducing Atmosphere) shall be as follows:

Initial Deformation-----	2000°F
Softening (H=W)-----	2075°F
Softening (H=1/2W)-----	2250°F
Fluid-----	2325°F

The Guaranteed Monthly Weighted Average Chlorine content of said coal shall not exceed Sixteen Hundredths Percent (0.16%).

The Guaranteed Monthly Weighted Average Nitrogen content of said coal shall not exceed One and Forty Hundredths Percent (1.40%).

**Delivery:** All shipments shall be loaded in Ingram Barge Company ("Ingram") barges at the Ohio County Dock, Ohio River Milepost 93.7 or the Marshall County Dock, Ohio River Milepost 110.4 (both a “Delivery Point”). Buyer shall, at Buyer’s expense, ensure that a sufficient number of suitable, clean and seaworthy barges are made available at the Delivery Point and that such barges are compatible with the Delivery Point’s loading facilities. Each barge shall be loaded to a minimum of 1,550 tons unless instructed otherwise by Ingram and released to Ingram for direct shipment to Spurlock Power Station no later than 48 hours after the empty barge is placed at the Delivery Point. Seller shall be responsible for all fleeting, shifting, harbor services, and standby loadings charges at the Delivery Point. Buyer shall be responsible for all fleeting, shifting, harbor services, and standby loadings charges at the unloading point. Title to, and risk of loss, for coal delivered hereunder shall remain with Seller until accepted by Buyer’s carrier at the Delivery Point.

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Any charges incurred by Buyer as a result of lightweight barges or loading delays that are caused by Seller and are not attributable to Force Majeure or the instructions of the Ingram will be deducted from the Price of the coal.

**Sampling and Analysis:** All of said coal shall be sampled by Seller at the Delivery Point and analyzed on an "as received" basis in accordance with ASTM Standards, and it shall be computed and determined on a weighted monthly average of the analyses for pricing adjustments, but on a per barge basis to determine rejection rights. All analysis for purposes of rejection shall be on a per barge basis. Sampling, preparation, and analysis shall be conducted by Mineral Labs Inc. All costs associated with sampling and analysis hereunder shall be for Buyer's account.

**Weighing:** The weight of coal sold and purchased hereunder shall be determined by Seller's certified belt scale weights at the Delivery Point. Such weights shall be accepted as correct and govern settlements hereunder.

Seller shall give prompt notification to Mineral Labs Inc. before the loading of any barge. Said laboratory must perform the following for each barge that is to be loaded by Seller: preloaded barge inspection, observation of loading, and final proximate analysis of the coal. Seller must contact said laboratory prior to loading of the barge in ample time for a laboratory representative to be present to administer said duties. Buyer understands that the laboratory representative who performs said duties will be subject to reasonable safety rules and regulations, including but not limited to all MSHA rules and regulations and Seller's safety rules and regulations. Seller agrees to permit selected laboratory representative on their premises to perform these responsibilities. Such notification shall include, specifically, the barge numbers, short proximate analysis, tonnage, and other pertinent information as mutually agreed upon. It is understood and agreed that Buyer WILL NOT accept any barges unless the above procedure is performed. Any charges, such as demurrage, incurred by Buyer as a result of Seller's late notification to selected laboratory shall be the responsibility of Seller and, therefore, will be deducted from the payment made to Seller.

**Acceptance:** The required acceptance of coal received by Buyer is subject to the coal's conformity with the requirements herein and with Seller's compliance with the terms of this Purchase Order. Buyer reserves the right, in its sole discretion, in any event prior to unloading, to reject (1) any barge of coal that does not meet the Rejection Limits described in the section labeled "Quality" above within forty-eight (48) hours of receipt of Seller's analysis, (2) any portion on a bargeload basis if, upon visual inspection, it is apparent that the barge is not substantially free of extraneous material not normally contained in a coal shipment, or (3) any barge that contains "hot" coal or any non-conforming coal that may cause problems in unloading and handling, including, but not limited to any barge that does not meet the requirements hereof described in the Section labeled "Size" above. Upon rejection pursuant to any of the above, Seller shall immediately remove such shipment from Buyer's premises at Seller's expense. Any shipment rejected by Buyer shall be made up by Seller as soon as practicable in accordance with a delivery schedule agreed upon by the parties.

**Price:** Seller has guaranteed a monthly weighted average heat content of 12,500 Btu/lb.; therefore, the Price of all said coal, f.o.b. barge, shall be One Hundred Seventy-Three and Two Tenths Cents (173.2 cents) per million Btu.

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Coal received and utilized, instead of rejected as per Buyer's right, which varies from the specifications set forth above in the section labeled "Quality," will be paid for by Buyer SUBJECT to the Price Adjustments set forth below:

**Price Adjustments:**

**Ash Content:** The following Price Adjustments will be deducted from the Price for coal that exceeds ten and five tenths percent (10.5%). For each one percent (1%) that the ash content exceeds ten and five tenths percent (10.5%), Twenty Cents (\$.20) per ton shall be deducted from the Price. A pro rata adjustment shall be made for any fractional portion of such a one percent (1%) excess in ash content.

**Sulfur Content:** For each one-tenth percent (0.1%) sulfur content that exceeds 6.75 lbs. SO<sub>2</sub>/MMBtu specification of this Purchase Order, Twenty Cents (\$.20) per ton will be deducted from the Price. A pro rata adjustment shall be made for any fractional portion of such one tenth (0.1%) excess in sulfur content.

**Heat Content:** All coal delivered by Seller shall be adjusted on a cents per million Btu basis. If the Btu content is below 11,000 Btu/lb., an additional Twenty-Five Cents (\$.25) per ton per 100 Btu/lb. will be deducted from the Price. A pro rata adjustment shall be made for any variance representing a fractional portion of 100 Btu/lb. in heat content.

The above mentioned Price Adjustments for coal that varies from the Guaranteed Monthly Weighted Average specifications, but which is received and utilized by Buyer, shall in no way limit or restrict Buyer's right to reject any and all coal that does not meet the Rejection Limits set forth under "Quality" above, as determined by the daily individual analysis for all bargeload deliveries for such day. The receipt and use of such non-conforming coal in no way limits or restricts Buyer's right to reject future non-conforming shipments.

**Payment:** Buyer will make payment in full by the 25th day of the month for all coal unloaded by Buyer through the second Saturday of that month at Buyer's Plant. Buyer will make payment in full on the 10<sup>th</sup> day of the following month for all coal unloaded at Buyer's Plant after the second Saturday of the previous month through the end of that month. If date on which a payment is due is a weekend day, holiday, or other day banks are closed for business, then such payment shall be due on the next day on which banks are open for business. All quality adjustments shall be invoiced on a monthly basis, and will be paid through or credited against payment of coal of the next succeeding invoice. All payments shall be made by Automated Clearing House ("ACH") transfer to the following account:

ABA No. [REDACTED]  
ACH No. [REDACTED]  
Account No. [REDACTED]  
Account Name: Ohio Valley Resources, Inc.

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Inquiries to Seller concerning invoicing shall be to:

Murray Energy Corporation  
46226 National Road  
St. Clairsville, Ohio 43950  
Attention: Accounts Receivable Department Email: arinfo@coalsource.com  
Phone: 740-338-3100  
Facsimile: 740-338-3414

**Notices:** All notices under this Purchase Order shall be made to the addresses specified below. Unless expressly provided otherwise, notices shall be in writing and delivered by overnight mail, 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 Section.

Notices to Buyer:

East Kentucky Power Cooperative, Inc.  
Attn: Wes Kidd  
P.O. Box 707  
Winchester, Kentucky 40392-0707  
wes.kidd@ekpc.coop

Notices to Seller:

Consolidation Coal Company  
Attn: Andrew W. Cox  
46226 National Road  
St. Clairsville, OH 43950  
Email: andycox@coalsource.com

With copy to:

Murray Energy Corporation  
General Counsel  
46226 National Road  
St. Clairsville, OH 43950  
Email: legal@coalsource.com  
and  
Email: meccoalsales@coalsource.com

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**Terms and Conditions:** Additional terms and conditions, attached hereto, and incorporated herein by reference, are an integral part of this Purchase Order and are binding provisions hereof.

**East Kentucky Power Cooperative, Inc. ("BUYER")**

By:   
\_\_\_\_\_  
**Mark Horn**  
**Manager, Fuel & Emissions**

**Consolidation Coal Company ("SELLER")**

Accepted By: \_\_\_\_\_  
**Duly Authorized Signatory**

Title: Vice President

**TERMS AND CONDITIONS**  
**TO**  
**PURCHASE ORDER 51533**

**The following terms and conditions are incorporated by reference into Purchase Order #51533 (the "Purchase Order").**

**Force Majeure:** It is specifically understood and agreed that the obligations of both parties under this Purchase Order are subject to events of Force Majeure, as defined below. If a valid event of Force Majeure occurs, the affected party shall be excused from performance of its obligations to the extent made necessary by and during the continuance of such Force Majeure, subject to prompt delivery of written notice of such event of Force Majeure (including a detailed description of the Force Majeure, expected time period of the Force Majeure, and impact of the Force Majeure) to the other party, provided, however, that the disabling effects of such Force Majeure shall be eliminated by such claiming party as soon as, and to the extent practicable, by use of its best efforts. During any period when Seller asserts a Force Majeure condition and said condition results in a reduction of coal deliveries, Seller shall prorate deliveries of coal among its purchasers of coal of similar quality based on contractual commitments under written agreements in effect at the time of the event of Force Majeure obligating Seller to sell coal to such purchaser. In such event, Seller shall advise Buyer of contract shipments to each such purchaser for the preceding six months in order that the size of the reduced deliveries can be established. Seller shall not enter into any new contracts for the sale of similar quality coal to that purchased by Buyer hereunder while Buyer is receiving prorated deliveries unless such new contract provides that deliveries shall only be made after the event of Force Majeure is lifted. During any period when BUYER asserts a Force Majeure condition and said condition results in a reduction of coal deliveries to the Plant, BUYER shall prorate its receipt of deliveries of similar quality based on the remaining tonnage to be delivered on contractual commitments under written agreements in effect at the time of the event of Force Majeure obligating BUYER to purchase coal from third-party suppliers. In such event, BUYER shall advise SELLER of its scheduled shipments from each such supplier for the preceding six months in order that the size of the reduced deliveries can be established. BUYER shall not enter into any new contracts for the sale of similar quality coal while SELLER is supplying prorated deliveries unless such new contract provides that deliveries shall only be made to BUYER after the event of Force Majeure is lifted. The suspension of obligations caused by a valid event of Force Majeure shall exist only for such time as said occurrence is in effect, and after said occurrence has ended or been resolved, both parties shall be fully bound to perform under the terms of this Purchase Order for the duration of this Purchase Order, except that any deficiencies in the production by Seller, receipt by Buyer or sale of coal hereunder caused by Force Majeure will only be made up at the discretion of the non-declaring party and the Term of this Purchase Order shall not be extended by Force Majeure except at the sole discretion of the non-declaring party. No other acts or events shall excuse either party from full performance of this Purchase Order except as may be stated under the other terms of this Purchase Order.

"Force Majeure" as used herein shall mean a cause beyond the reasonable control of Seller or Buyer, as the case may be, whether foreseen or unforeseen, which wholly or materially prevents the mining, loading, or delivery of coal meeting the specifications under this Purchase Order, or receiving, transporting or delivery of same, or the unloading, storing, or burning of coal by Buyer at its destination and which the party claiming Force Majeure could not have prevented with the exercise of reasonable prudence. Examples (without limitation) of Force Majeure, but only if beyond the control of Seller or Buyer, as the case may be, are the following:

Acts of God; acts of the public enemy; insurrections; riots, strikes; labor disputes; shortage of supplies; fires, explosions; floods; roof falls, rib rolls, mine collapses or other mine disasters; breakdowns of or damage to plants, mine equipment or facilities; interruptions to or contingencies of transportation; embargoes; orders or acts of civil or military authority; or acts of terrorism.

Notwithstanding the foregoing, Force Majeure, for purposes of this Purchase Order, shall not include (i) the development or existence of economic conditions that may adversely affect Buyer's utilization of coal or Seller's delivery or sale of coal, (ii) acts or omissions of Seller or Buyer constituting negligence, or mismanagement on the part of Seller or Buyer, (iii) the inability of Seller to mine coal from its controlled reserves meeting the specifications hereof, unless such inability is caused by an example of Force Majeure specifically listed above or (iv) causes or events affecting the performance of third-party sellers of goods or services except to the extent caused by an event that otherwise is a Force Majeure event.

In the event a Force Majeure is declared and halts seventy-five percent (75%) or more of the scheduled deliveries hereunder, and the Force Majeure continues unabated for a period of three (3) months or more, then the unaffected party may, at its option, terminate the remaining deliveries under this Purchase Order by thirty (30) days' prior written notice to the party asserting such Force Majeure without liability to either party.

To the extent possible, Buyer and Seller shall utilize good faith efforts to minimize the adverse effects of a Force Majeure. Nothing in the preceding sentence shall, however, obligate Buyer to find additional markets for Seller's coal or obligate Seller to find substitute coal sources for Buyer. The impact of any Force Majeure event claimed by Buyer or Seller shall not be negated or enhanced should Buyer or Seller elect to perform ancillary work activities, such as, but not limited to, repairs, maintenance or construction activity coincidental with any Force Majeure event.

The parties agree that 2-615 of the Uniform Commercial Code, as enacted, is not applicable to this Purchase Order, with the express terms of the Purchase Order instead governing.

**Amendment; Waiver:** No amendment to this Purchase Order shall be enforceable unless in writing and signed by the party against whom enforcement is sought. No waiver or failure to insist upon strict compliance with any obligation, covenant, agreement, or condition of this Purchase Order shall operate as a waiver of, or an estoppel with respect to, any subsequent or other failure, regardless of any provision of the Uniform Commercial Code, as enacted, to the contrary. It is further understood and agreed that Buyer does not waive its rights under this Purchase Order by receiving any shipments of coal, and acceptance thereof shall not be implied unless Buyer fails to give Seller prompt notice of any breaches or defaults within a reasonable time after each sampling period has ended and the coal analysis has been completed.

**Compliance with Laws:** An explicit obligation of Seller and Buyer under this Purchase Order is that Seller and Buyer shall perform its obligations hereunder in accordance with all applicable Federal, state, county and municipal laws, regulations codes and ordinances, including, but not limited to, those applicable to mining and transportation of coal. Transportation of coal by Seller or Buyer or by any third party transporting coal on Seller's or Buyer's behalf shall comply with applicable highway laws and regulations governing the weight of vehicles and all other highway laws promoting public safety, health, and welfare, including all laws governing the operation of vehicles on any road or highway.

**Damage to Equipment:** If Buyer determines, in good faith, that any foreign matter in the coal delivered by Seller causes damage to electrical production, operating, receiving, or handling equipment, the parties shall meet to mutually investigate the extent of the damage and to attempt in good faith to resolve the matter. Buyer shall promptly notify Seller if Buyer suspects that Seller's coal caused said Damage to Equipment. Buyer shall document the damage due to the foreign matter. If it is determined that foreign matter in the coal is responsible for any of the damage, then the costs and expenses arising out of such damage shall be paid by Seller to Buyer.

**Indemnity and Insurance:** Each party agrees to defend, indemnify, and hold harmless the other party, its directors, officers, employees, and agents, from any and all damage, loss, claim, demand, suit, liability, penalty, or forfeiture of every kind and nature—including, but not limited to, costs and expenses of defending against the same and payment of any settlement or judgment, therefore, by reason of (a) injuries or deaths to persons, (b) damages to or destructions of properties, (c) pollutions, contaminations of, or other adverse effects on the environment, or (d) violations of governmental laws, regulations, or orders or breaches of this Purchase Order—whether suffered directly by each party itself or indirectly by reason of claims, demands, or suits against it by third parties, resulting or alleged to have resulted from acts or omissions of each party, its employees, agents, subcontractors, or other representatives or from their presence on the premises of the other party or otherwise from performance of this Purchase Order.

Seller shall provide and maintain, and shall require any and all subcontractors to provide and maintain, with an insurance company authorized to do business in the Commonwealth of Kentucky and otherwise acceptable to Buyer the following insurance with proof of such coverage, if applicable, to be provided to Buyer within two (2) days of the date first set forth above:

**Workers Compensation and Employer's Liability Policy:** Seller shall submit evidence of Seller's Workers' Compensation and Employer's Liability Insurance Policy, and each such policy shall include:

1. Workers' Compensation (statutory benefits coverage) Insurance accordance with the laws of the state in which the work is performed.
2. Employer's Liability with a minimum limit of One Million Dollars (\$1,000,000) with respect to Bodily Injury Each Accident/(\$1,000,000), Bodily Injury by Disease Each Employee/(\$1,000,000), and Bodily Injury by Disease Policy Limit.

**Commercial General Liability Policy:** Seller shall provide evidence of Seller's policy providing Commercial General Liability Insurance, with combined single minimum limit for bodily injury and property damage of One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) General Aggregate, and the following coverage:

1. Coverage for premises and operations, including work let or sublet.
2. No exclusion of coverage for Blanket Contractual Liability to the extent covered by the policy against liability assumed by Seller under this Purchase Order.
3. No exclusion for Broad Form Property Damage hazard.



4. Said policy shall name Buyer as an Additional Insured, with Seller's policy deemed to be primary.

5. Said policy shall be endorsed to provide that the underwriter(s) have waived their Rights of Recovery Against Others (subrogation) against Buyer and Buyer's insurance carrier(s).

6. Should policy contain a deductible clause for bodily injury or property damage liability, said deductible shall be shown on a Certificate of Insurance delivered to Buyer, and Seller's carrier shall agree to pay any such claims "first dollar" and then recover the deductible amount from Seller.

**Commercial Automobile Liability Insurance Policy:** Seller shall provide evidence of Seller's Commercial Automobile Liability Insurance covering the use of all owned, non owned, and hired vehicles, with a minimum combined single limit for bodily injury and property damage of Two Million Dollars (\$2,000,000) each accident with respect to Seller's vehicles assigned to or used in performance of work under this Purchase Order. Said policy shall name Buyer as an Additional Insured with said policy designated to be primary. Said policy shall include an endorsement providing that the underwriter(s) have waived their Rights of Recovery Against Others (subrogation) against Buyer and Buyer's insurance carrier(s). Should policy contain a deductible clause for bodily injury or property damage liability, said deductible shall be shown on the Certificate of Insurance, and Seller's carrier shall agree to pay any such claims "first dollar" and then recover the deductible amount from Seller.

**Umbrella/Excess Liability Insurance:** Employer Liability, Commercial General Liability, and Commercial Automobile Liability, and if applicable, Environmental Impairment ("Pollution") Liability Insurance. SELLER shall provide a minimum Three Million Dollars (\$3,000,000) Each Occurrence and, Three Million Dollars (\$3,000,000) in Aggregate umbrella/excess liability insurance. Said policy shall be "follow-form" to the extent of coverage in provisions in the primary forms Employer Liability, Commercial General Liability, and Commercial Automobile Liability, with regards to coverage terms and policy provisions. Said coverage must continue in force for a minimum of two (2) years from the date of expiration or termination of this Purchase Order.

**Landing Owners'/Stevedores/Wharfinger's Liability insurance** with basic coverage in the amount of \$ 5,000,000.

The above policies to be provided by Seller shall be written by companies satisfactory to Buyer or having a Best Rating of not less than A—"Excellent"). These policies shall not be materially changed or cancelled except with a thirty (30) day written notice to Buyer from Seller and the Insurance Carrier. Evidence of coverage, notification of cancellation, or other changes shall be mailed to:

East Kentucky Power Cooperative, Inc.  
ATTN: Fuel and Emissions Department  
P. O. Box 707  
Winchester, KY 40392-0707

Minimum limits and coverage required under this Section should not be construed to necessarily be adequate for Seller's own insurance and risk management needs. Buyer reserves the right to request and receive a summary of coverage of any of the above policies or endorsements. Seller's failure to provide the insurance required above shall permit Buyer to suspend shipments under this Purchase Order until such breach is remedied and to pursue all other remedies permitted by the Uniform Commercial Code.

Buyer shall cause its carrier to procure and maintain, during the Term of this Purchase Order:

(a). Workers Compensation and Employers' Liability Insurance, and if any of Buyer's/carrier's workers are engaged in maritime employment, U.S. Longshore & Harbor Workers Insurance, and if any of Buyer's/carrier's workers are rail workers, coverage for Federal Employers Liability Act ("FELA") exposures, in compliance with all applicable state and Federal laws (and if applicable FELA coverage) with employers' liability limits of not less than \$1,000,000 per occurrence, Occupational Disease Coverage, Other States Insurance, Voluntary Compensation, and Alternate Employer/Borrowed Servant Endorsements.

(b). Business Auto Insurance on ISO Form CA 00 01 or equivalent with Liability, Bodily Injury and Property Damage, Comprehensive, and UM/UIM coverage, covering all owned, non-owned, hired, and used vehicles, with limits of not less than \$1,000,000 per occurrence combined single limits.

- (c). Commercial General Liability Insurance, or equivalent, and if applicable, commercial umbrella insurance with following form coverage, to achieve Bodily Injury and Property Damage limits of not less than \$5,000,000 per occurrence, with defense costs not limited by policy limits, written on ISO occurrence form CG 00 01, or equivalent, covering liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, liability assumed under an insured contract (including the tort liability of another assumed in a business contract) – through ISO Broad Form Contractual Liability, Action-Over Indemnity Buyback, or equivalent endorsement.
- (d). For barge deliveries.
- i. Protection and Indemnity Insurance on Form SP-23 or SP-38 Form, or equivalent, with sistership clause un-amended, primary limits of \$1,000,000 per occurrence, covering Jones Act, Crew, Collision, Cargo, and Tower's legal liabilities, covering in rem claims and providing that such claims shall be treated as a claim against the insured in personam, with Broad Form Contractual Liability provision to cover all of Carrier's contractual hold harmless, defense, and indemnity obligations under Purchase Order, deleting "as owner" clause.
  - ii. Hull and Machinery Insurance, or equivalent, in amount equal to value of all vessels used by Buyer/carrier in performance of the Purchase Order, on AIMU Hull Clauses 6/2/77 Form, AIMU Tug Form, Taylor Form, or equivalent, including Collision and Tower's Liability.
  - iii. Pollution Insurance, WQIS, or equivalent, covering all of Buyer's/carrier's state and federal legal obligations and liabilities, including but not limited to those under the Federal Water Pollution Control Act, the Oil Pollution Act of 1990, and C.E.R.C.L.A., scheduling and vessels Buyer/carrier may use to perform this Purchase Order, with primary limits of not less than \$5,000,000 per occurrence.
  - iv. Excess and/or Bumbershoot Insurance, with form following primary coverage, in amount necessary to achieve liability insurance limits of \$20,000,000 for each above type of coverage to the fullest extent applicable and/or practicable.
- (e). Additional requirements by Buyer/carrier under this Section.
- i. Seller, and its parents, subsidiaries and affiliates including directors, officers, and employees shall be named as additional insured, for policies as described in items (b), (c), (d)(i), (d)(iii), and (d)(iv) hereunder;
  - ii. Coverage shall be primary and non-contributory to any and all other insurance of the Seller;
  - iii. Waiver of Subrogation; and
  - iv. Before commencement of performance of any deliveries under this Purchase Order, Buyer or its carrier shall furnish to Seller certificates of insurance (i) showing that all above-specified insurances and limits are in place, (ii) showing coverage inception and expiration dates and times, (iii) showing that insurers will provide a thirty (30) day written notice to Seller in advance of cancellation of any of these insurances in accordance with policy provisions, and (iv) evidencing that the waivers of subrogation and the additional insured status required herein, are full force and effect.

**Maintenance Outages:** Notwithstanding any other provisions of this Purchase Order, and in order to accommodate Buyer's plant and/or coal handling maintenance outages, Buyer may, at its sole option, up to two times each calendar year, reschedule up to one month's tonnage provided prior written notice is given at least thirty (30) days' in advance and any such rescheduled deliveries are made up within six months of the end of such month.

**Changes in Legislation:** It is fully contemplated by both parties that Buyer is purchasing said coal for the primary purpose of using it as fuel for the generation and production of electrical power under governmental standards and regulations in effect as of the date first set forth above, and it is understood and agreed that in the event any federal, state, or local law, regulation, or standard has been or is enacted, either generally or with respect to the specific plant or generating unit for which coal shipped under this Purchase Order is intended, that would prohibit or make commercially unreasonable Buyer's purchase or use in its plant of the grade or quality of coal hereinbefore specified for such purpose, such as stricter or relaxed environmental quality standards, then Buyer and Seller shall use reasonable efforts to negotiate an amendment to the Purchase Order to eliminate the issue, if possible, and if a mutually agreeable amendment is not reached within thirty (30) business days, all obligations under this Purchase Order by Buyer to purchase said prohibitive grade or quality of coal will be discharged and excused on the date on which such law, regulation, or standard's applicable provisions go into effect. However, said parties will be fully bound and legally obligated to perform under the exact terms and conditions of this Purchase Order up and until said date. It is also understood that in the event that during the

Term of this Purchase Order there is any federal, state, or local law, regulation, or standard enacted that prohibits Seller from mining, removing, and delivering coal to Buyer, then Seller and Buyer may, upon the effective date specified in such legislation or regulation, be discharged and excused from the respective obligations under this Purchase Order to sell and purchase coal, if the parties mutually agree to discharge and excuse such obligations.

**Breach:** 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 where such failure is not remedied within five (5) days after written notice, thereof, provided the payment is not subject to a good faith dispute;
- (ii) the failure of the Defaulting Party to deliver or to accept delivery of the quantity of coal to be delivered hereunder unless excused by Force Majeure, other express contractual provisions, hereof, or the other party’s failure to perform, and such failure is not remedied within five (5) days after notice thereof;
- (ii) the insolvency, bankruptcy, or assignment for the benefit of creditors of either party; or
- (iv) the failure of the Defaulting Party to comply with any material obligation under this Purchase Order (other than those described specifically in this Section above or below) where such failure continues uncured for five (5) days after written notice thereof, provided that if it shall be impracticable or impossible to remedy such failure within such five (5) 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;

Upon the occurrence and during the continuance of an Event of Default, as to the Defaulting Party, the other party may:

- (i) withhold any payments due to the Defaulting Party until such Event of Default is cured;
- (ii) suspend performance of its obligations under this Agreement until such Event of Default is cured;
- (ii) Recover all damages and pursue all remedies set forth for buyers or sellers, as applicable, under the Uniform Commercial Code, as enacted, excluding, however, any consequential, punitive, special, or indirect damages; or
- (iv) terminate by written notice this Purchase Order as of any date specified by the non-Defaulting Party within thirty (30) days after such notice is given; however, such notice shall not be required where Defaulting Party files for a voluntary bankruptcy proceeding or similar proceeding.

Such rights and remedies shall be in addition to any other right or remedy the non-Defaulting Party may have at law, including under the Uniform Commercial Code, or in equity.

**Non-Assignability, Choice of Law:** This Purchase Order is personal as between Buyer and Seller and is non-assignable, except that, after prior written notice to the other party, Buyer may assign its rights under this Purchase Order only to the Rural Utilities Service or other lenders to Buyer. Otherwise, rights or obligations under this Purchase Order, and this Purchase Order itself, are neither assignable nor otherwise transferable and may not be subcontracted except by the written consent of said parties, which consent shall not be unreasonably withheld. This Purchase Order is governed by the laws of the Commonwealth of Kentucky, without regard to its choice of law principles. The parties hereto agree that any disputes that may arise under this Purchase Order that culminates in litigation shall be instituted and tried in Clark County, Kentucky or the United States District Court, sitting in Fayette County, Kentucky, with such applicable courts having sole and exclusive jurisdiction.

**Entire Agreement:** This instrument contains the entire contract between the parties, and there are no representations, understandings, or agreements, oral or written, which are not included or expressly referred to herein.

**Severability:** If any provision of this Purchase Order or its application are held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of all other applications of that provision, and of all other provisions and applications hereof, will not in any way be affected or impaired. If any court of competent jurisdiction shall determine that any provision of this Purchase Order is in any way unenforceable, such provision shall be reduced to whatever extent is necessary to make such provision enforceable.

**Fair Competitive Bidding:** This Purchase Order has been awarded to Seller pursuant to a fair and confidential competitive bidding process. By entering this Purchase Order, Seller represents and warrants that it did not promise or deliver anything of significant value to, or solicit or receive any confidential competitive bidding information regarding this Purchase Order from, any officer, director, agent or employee of Buyer, or any member of their families. Buyer shall have the right to terminate this Purchase Order should it determine that this representation of Seller is false.

The Equal Employment Provisions on the footer of the Purchase Order are applicable hereto and are hereby expressly incorporated herein.