

**ASSIGNMENT OF COAL PURCHASE AND SALE AGREEMENT  
NO. 07-77-05-900**

This **ASSIGNMENT OF COAL PURCHASE AND SALE AGREEMENT NO. 07-77-05-900** (this "Assignment") from **AEP Generation Resources Inc.**, a Delaware corporation ("AEPGR") to **Newco Kentucky Inc.**, a Kentucky corporation ("Newco Kentucky") is executed on the 31<sup>st</sup> day of December, 2013 (the "Effective Date").

**WHEREAS**, Ohio Power Company ("OPC") and Consolidation Coal Company, a Delaware corporation, and McElroy Coal Company, a Delaware corporation, both of which companies are now merged into and/or have transferred all assets to their successor Ohio Valley Resources, Inc., an Ohio corporation ("Seller") entered into that certain Coal Purchase and Sale Agreement No. 07-77-05-900 dated January 6, 2006, as amended and revised, from time to time (the "CSA").

**WHEREAS**, AEPGR is an assignee of the CSA from OPC as of December 31, 2013, whereby OPC assigned all and AEPGR assumed all of OPC's rights, title, interests, and obligations under the CSA.

**WHEREAS**, after AEPGR received an assignment of the CSA from OPC, AEPGR assigned that portion of the CSA related to the Mitchell Plant as set forth in the attached Exhibit A incorporated herein and attached hereto ("Kentucky CSA") to Newco Kentucky, as Newco Kentucky will be promptly merged into Kentucky Power Company.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Assignment**. Effective as of the Effective Date, AEPGR, hereby assigns AEPGR's rights, title, interests, and obligations under the CSA as provided for in the Kentucky CSA to Newco Kentucky;
2. **Assumption**. Newco Kentucky hereby accepts such rights, title, interests and obligations in and to the Kentucky CSA and assumes and becomes responsible for, and shall hereafter pay, perform and discharge as and when due such obligations arising in connection with the Kentucky CSA on and after the Effective Date.
3. **Further Assurances**. From and after the date hereof, AEPGR and Newco Kentucky shall, without further consideration, execute, deliver and take such actions as may be reasonably required of them in connection with the transaction contemplated by this Assignment.
4. **Successors and Assigns**. The terms and provisions of this Assignment shall be binding upon and inure to the benefit of the respective parties hereto, and their respective successors and assigns.

5. **Counterparts**. This Assignment may be executed in any number of counterparts and each such executed counterpart (including electronically transmitted counterparts) shall be, and shall be deemed to be, an original, but all of which shall constitute, and shall be deemed to constitute, in the aggregate, but one and the same instrument.
6. **Entire Agreement**. This Assignment, together with the Kentucky CSA, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof.

***[End of document, signature page follows]***

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**EXECUTED as of the date first set forth above.**

**ASSIGNOR:**

**AEP GENERATION RESOURCES INC.** *[Handwritten mark]*

By: *Charles E. Zebula*  
Charles E. Zebula, President

**ASSIGNEE:**

**NEWCO KENTUCKY INC.**

By: *J. D. Cross*  
Jeffrey D. Cross, Vice President

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CONSOL Energy Sales Company  
 CNX Center  
 1000 CONSOL Energy Drive  
 Canonsburg, PA 15317-6506  
 Attn: Senior Vice President – Sales

July 19, 2013

Re: Coal Purchase and Sale Agreement No. 07-77-05-900 dated January 6, 2006 between Ohio Power Company ("Buyer") and Consolidation Coal Company and McElroy Coal Company (collectively, the "Seller")

Amendment No. 2013-2

Gentlemen:

Reference is made to the above-captioned Coal Purchase and Sale Agreement, as amended, (the "Agreement") under which Seller is supplying coal to Buyer.

Effective July 19, 2013, Buyer and Seller hereby agree to amend the Agreement as follows:

- 1) Article II, Obligations and Deliveries, Section 2.1. Contract Quantity, is hereby deleted in its entirety and the following is substituted in lieu thereof:

Section 2.1. Contract Quantity. During the Delivery Period, and subject to Article V herein, Seller agrees to sell and deliver to the Buyer and Buyer agrees to purchase and accept from Seller, at the Designated Delivery Point, the quantity of Coal set forth herein and any additional quantity of Coal to be delivered during the applicable Contract Year pursuant to Section 2.5(e) and Article XII (the "Contract Quantity").

| <u>Contract Year</u> | <u>McElroy <sup>(H)</sup><br/>Tons Per Year</u> | <u>Shoemaker<br/>Tons Per Year</u> |
|----------------------|---|------------------------------------|
| 2007*                | 2,207,984                                       | 0                                  |
| 2008*                | 2,342,016                                       | 0                                  |
| 2009*                | 1,812,906 <sup>(A)</sup>                        | 2,000,000                          |
| 2010*                | 4,153,327 <sup>(B)</sup>                        | 2,037,461                          |
| 2011*                | 3,321,008 <sup>(C)</sup>                        | 2,530,006 <sup>(D)</sup>           |
| 2012*                | 3,799,917 <sup>(E)</sup>                        | 1,512,000 <sup>(F)</sup>           |
| 2013                 | 4,213,000 <sup>(G)</sup>                        | 400,000                            |
| 2014                 | 2,900,000                                       | 1,000,000                          |
| 2015                 | 2,900,000                                       | 1,000,000                          |
| 2016                 | 2,900,000                                       | 1,000,000                          |
| 2017                 | 2,900,000                                       | 1,000,000                          |
| 2018                 | 2,900,000                                       | 1,000,000                          |
| 2019                 | 2,900,000                                       | 1,000,000                          |
| 2020                 | 2,900,000                                       | 1,000,000                          |
| 2021                 | 2,900,000                                       | 1,000,000                          |

\*The Tons referenced for these Contract Years are the actual Tons delivered and unloaded in the Contract Year.

(A) Of the quantity unloaded, 188,977 Tons were pre-shipped from the 2010 McElroy/Non-Mitchell obligation and were priced at the applicable 2010 Contract Price.

(B) Of the quantity unloaded, 483,044 Tons represent 2009 McElroy/Mitchell contract shortfall and were priced at the applicable 2009 Contract Price.

(C) Of the quantity unloaded, 84,000 Tons represent 2010 McElroy/Non-Mitchell contract shortfall and were priced at the applicable 2010 Contract Price.

(D) Of the quantity unloaded, 292,000 Tons represent 2010 Shoemaker contract shortfall and were

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priced at the applicable 2010 Contract Price.

(E) Of the quantity unloaded, 763,000 Tons represent 2011 McElroy/Mitchell contract shortfall and were priced at the applicable 2011 Contract Price.

(F) Of the quantity unloaded, 262,000 Tons represent 2011 Shoemaker contract shortfall and were priced at the applicable 2011 Contract Price.

(G) Of the quantity obligated, the first 713,000 Tons unloaded represent 2012 McElroy/Non-Mitchell contract shortfall and will be priced at the applicable 2012 Contract Price.

(H) Seller may deliver Shoemaker Tons in lieu of the McElroy/Non-Mitchell Tons for Contract Years 2009 through 2012.

Unless otherwise mutually agreed upon by the Parties, such tonnage shall be delivered on an approximately ratable basis during each month of each Contract Year.

- 2) Article V, Contract Price, Section 5.1. Contract Price, Table 5.1.1 is hereby deleted and replaced with the following in lieu thereof.

Table 5.1.1

| <u>Contract Year</u>    | <u>McElroy/<br/>Non-Mitchell</u> | <u>McElroy/<br/>Mitchell</u> | <u>Shoemaker</u> | <u>Powhatan(e)</u> |
|-------------------------|----------------------------------|------------------------------|------------------|--------------------|
| Jan 2008                | \$37.219                         | \$38.219                     | N/A              | \$36.965           |
| Feb 2008 – June 2008(a) | \$33.938                         | \$34.938                     | N/A              | \$33.684           |
| July 2008 – Dec 2008(a) | \$34.012                         | \$35.012                     | N/A              | \$33.684           |
| Jan 2009 – June 2009    | \$48.674(b)                      | \$49.674                     | \$42.000(h)      | N/A                |
| July 2009 – Dec 2009    | \$48.674(c)                      | \$49.674                     | \$42.000(h)      | N/A                |
| 2010                    | \$44.433(d)                      | \$45.433                     | \$43.000         | N/A                |
| Jan 2011 – June 2011    | \$46.433(f)                      | \$47.433                     | \$45.000         | N/A                |
| July 2011 – Dec 2011    | \$46.461(f)                      | \$47.461                     | \$45.000         | N/A                |
| Jan 2012 – June 2012    | \$61.730(g)                      | \$62.730                     | \$62.404(j)      | N/A                |
| July 2012 – Dec 2012    | \$61.865(g)                      | \$62.865                     | \$62.539(j)      | N/A                |
| Jan 2013 – June 2013    | \$60.770(i)                      | \$61.770                     | \$54.762(k)      | N/A                |
| July 2013 – Dec 2013    | \$60.620(i)                      | \$61.620                     | \$54.710(k)      | N/A                |
| 2014                    | \$57.055(l)                      | \$58.055                     | \$56.581(m)      | N/A                |
| 2015                    | \$53.755(n)                      | \$54.755                     | \$55.665(o)      | N/A                |
| 2016                    | \$57.060(p)                      | \$58.060                     | \$58.849(q)      | N/A                |

(a) Represents the discounted Contract Price commencing February 2008 through delivery of 1,951,680 Tons. Any 2008 Tons delivered thereafter shall be at the January 2008 Contract Price. The period July through December 2008 includes the \$0.074 per Ton increase for the WV Special Reclamation Tax<sup>1</sup>, applicable only to McElroy Tons.

(b) The Contract Price is a weighted average based on \$75.00 per Ton for Segment C McElroy at 1,000,000 Tons pursuant to Amendment 2008-2, and \$38.143 per Ton (Contract Price of \$37.815 per Ton pursuant to Amendment 2008-1, plus \$0.254 per Ton for the Miner Act and \$0.074 per Ton for WV Special Reclamation Tax<sup>1</sup>) at 2,500,000 Tons for the period January through June 2009.

(c) The Contract Price is a weighted average based on \$75.00 per Ton for Segment C McElroy at 1,000,000 Tons pursuant to Amendment 2008-2, and \$38.143 per Ton (Contract Price of \$37.815 per Ton pursuant to Amendment 2008-1, plus \$0.254 per Ton for the Miner Act and \$0.074 per Ton for the WV Special Reclamation Tax<sup>1</sup>) at 2,500,000 Tons for the period July through December 2009.

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- (d) The Contract Price reflects 2,500,000 Tons at \$39.093 per Ton (Contract Price of \$39.019 per Ton pursuant to Amendment 2008-3, plus \$0.074 per Ton for the WV Special Reclamation Tax<sup>1</sup>), 500,000 Tons at \$50.00 per Ton per negotiation between the Parties on March 11, 2009 and 1,000,000 Tons at \$55.00 per Ton pursuant to Amendment 2009-1.
- (e) The Contract Price reflects McElroy pricing, excluding the Miner Act and WV Special Reclamation Tax<sup>1</sup> adjustments, for which there will be no adjustment.
- (f) For the period January through June 2011, the Contract Price reflects 2,500,000 Tons at \$40.093 per Ton, (Contract Price of \$40.019 per Ton pursuant to Amendment 2008-3, plus an additional \$0.074 per Ton for the WV Special Reclamation Tax<sup>1</sup>), 500,000 Tons at \$51.00 per Ton per negotiation between the Parties on March 11, 2009 and 1,000,000 Tons at \$60.00 per Ton pursuant to Amendment 2009-1. For the period July through December 2011, the Contract Price reflects 2,500,000 Tons at \$40.019 per Ton, pursuant to Amendment 2008-3, 500,000 Tons at \$51.00 per Ton per negotiation between the Parties on March 11, 2009 and 1,000,000 Tons at \$60.00 per Ton pursuant to Amendment 2009-1. Additionally, for the period July through December 2011, the weighted average of the Contract Prices identified in the foregoing were increased by \$0.074 per Ton for the WV Special Reclamation Tax<sup>1</sup>, which was continued by the WV legislature until further notice.
- (g) The Contract Price reflects 250,000 Tons at \$52.00 per Ton per negotiation between the Parties on March 11, 2009, 500,000 Tons at \$64.875 per Ton pursuant to Amendment 2009-1, 1,125,000 Tons at \$65.13 per Ton pursuant to Amendment 2010-1, and 1,875,000 Tons at \$60.00 per Ton pursuant to Amendment 2011-2. Additionally, for the period January 2012 through June 2012, the weighted average of the Contract Prices identified in the foregoing were increased by \$0.074 per Ton, and for the period July 2012 through December 2012, the weighted average of the Contract Prices identified in the foregoing were increased by \$0.209 per Ton for the WV Special Reclamation Tax<sup>1</sup>, which was continued and increased by the WV legislature until further notice.
- (h) A \$2.77 per Ton discount shall be taken from the Contract Price, after all quality adjustments have been applied, for barge Coal loaded at the Alicia Dock delivered to one or more of the Plants from the Blacksville and Loveridge Mines, in lieu of Coal delivered from the Shoemaker Mine.
- (i) The Contract Price reflects 625,000 Tons at \$68.13 per Ton pursuant to Amendment 2010-1, 1,875,000 Tons at \$62.00 per Ton pursuant to Amendment 2011-2, and 1,000,000 Tons at \$53.34 per Ton pursuant to Amendment 2012-2. Additionally, for the Tons associated with Amendment 2010-1 and 2011-2, and for the period January 2013 through June 2013, the Contract Prices identified in the foregoing were increased by \$0.209 per Ton for the WV Special Reclamation Tax<sup>1</sup>, which was continued and increased by the WV legislature until further notice.
- (j) The Contract Price reflects 250,000 Tons at \$65.083 per Ton pursuant to Amendment 2009-1 and Amendment 2011-5, 437,500 Tons at \$63.87 per Ton pursuant to Amendment 2010-1 and Amendment 2011-5, and 562,500 Tons at \$59.908 per Ton pursuant to Amendment 2011-2 and Amendment 2011-5. Additionally, for the period January 2012 through June 2012, the weighted average of the Contract Prices identified in the foregoing were increased by \$0.074 per Ton and for the period July 2012 through December 2012, the weighted average of the Contract Prices identified in the foregoing were increased by \$0.209 per Ton for the WV Special Reclamation Tax<sup>1</sup>, which was continued and increased by the WV legislature until further notice.
- (k) The Contract Price reflects 25,000 Tons at \$66.439 per Ton pursuant to Amendment 2010-1 and Amendment 2011-5, 75,000 Tons at \$60.284 per Ton pursuant to Amendment 2011-2 and Amendment 2011-5, and 300,000 Tons at \$52.339 per Ton pursuant to Amendment 2012-2. Additionally, for the Tons associated with Amendment 2010-1 and 2011-2, and for the period January 2013 through June 2013, the Contract Prices identified in the foregoing were increased by \$0.209 per Ton for the WV Special Reclamation Tax<sup>1</sup>, which was continued and increased by the WV legislature until further notice.

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- (l) The Contract Price reflects 967,000 Tons at \$65.00 per Ton pursuant to Amendment 2011-2 and Amendment 2013-2, 966,000 Tons at \$53.34 per Ton pursuant to Amendment 2012-2 and Amendment 2013-2 and 967,000 Tons at \$52.82 per ton pursuant to Amendment 2013-2.
- (m) The Contract Price reflects 333,000 Tons at \$64.112 per Ton pursuant to Amendment 2011-2 and Amendment 2013-2, 334,000 Tons at \$53.004 per Ton pursuant to Amendment 2012-2 and Amendment 2013-2 and 333,000 Tons at \$52.638 per Ton pursuant to Amendment 2013-2.
- (n) The Contract Price reflects 966,000 Tons at \$53.34 per Ton pursuant to Amendment 2012-2 and Amendment 2013-2 and 967,000 Tons at \$54.17 per Ton pursuant to Amendment 2013-2. The remaining McElroy/Non-Mitchell Tons for this Contract Year shall be priced in accordance with Article V, Section 5.1 and Section 5.2.
- (o) The Contract Price reflects 334,000 Tons at \$54.343 per Ton pursuant to Amendment 2012-2 and Amendment 2013-2 and 333,000 Tons at \$56.992 per Ton pursuant to Amendment 2013-2. The remaining Shoemaker Tons for this Contract Year shall be priced in accordance with Article V, Section 5.1 and Section 5.2.
- (p) The Contract Price reflects 967,000 Tons at \$57.060 per Ton pursuant to Amendment 2013-2. The remaining McElroy/Non-Mitchell Tons for this Contract Year shall be priced in accordance with Article V, Section 5.1 and Section 5.2.
- (q) The Contract Price reflects 333,000 Tons at \$58.849 per Ton pursuant to Amendment 2013-2. The remaining Shoemaker Tons for this Contract Year shall be priced in accordance with Article V, Section 5.1 and Section 5.2.

<sup>1</sup> The base cost of the WV Special Reclamation Tax, \$0.07 per Ton, is considered, and included in all negotiated pricing.

- 3) Article V, Contract Price, Section 5.1, Contract Price, Table 5.1.2 is hereby deleted and replaced with the following in lieu thereof:

Table 5.1.2

| PRICING SCHEDULE   |                         |         |                                    |              |                |
|--------------------|-------------------------|---------|------------------------------------|--------------|----------------|
| Negotiation Period | Segment Pricing Periods | Segment | Annual Segment Tons <sup>1,2</sup> | McElroy Tons | Shoemaker Tons |
| 2011               | 2014                    | B       | 1,300,000                          | 967,000      | 333,000        |
| 2012               | 2014 through 2015       | C       | 1,300,000                          | 966,000      | 334,000        |
| 2013               | 2014 through 2016       | A       | 1,300,000                          | 967,000      | 333,000        |
| 2014               | 2015 through 2017       | B       | 1,300,000                          | 967,000      | 333,000        |
| 2015               | 2016 through 2018       | C       | 1,300,000                          | 966,000      | 334,000        |
| 2016               | 2017 through 2019       | A       | 1,300,000                          | 967,000      | 333,000        |
| 2017               | 2018 through 2020       | B       | 1,300,000                          | 967,000      | 333,000        |
| 2018               | 2019 through 2021       | C       | 1,300,000                          | 966,000      | 334,000        |
| 2019               | 2020 through 2021       | A       | 1,300,000                          | 967,000      | 333,000        |
| 2020               | 2021                    | B       | 1,300,000                          | 967,000      | 333,000        |

<sup>1</sup> Tons referenced in this Table 5.1.2 are for the identified Segment of each Contract Year referenced within a Segment Pricing Period.

<sup>2</sup> The Annual Segment Tons are as of the Effective Date of this Agreement. Should the Parties be unable to agree upon the Segment Price during a Negotiation Period(s), the Annual Tons may be less than those shown after the first Negotiation Period for the applicable Segments(s). Please refer to Section 5.2 for more detail.

- 4) Delete the second sentence in the first paragraph of Article XVIII, Successors, Assigns, and Assignment, and insert the following new second sentence in place thereof:

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"No assignment under this Article XVIII or conveyance of any interest in this Agreement shall in any way relieve the assignor or the conveying party from liability for full performance under this Agreement, except that, notwithstanding the foregoing, either party may, without the written consent of the other party, assign or convey any and/or all of its interest in this Agreement to one or more of its Affiliates, and upon such assignment, assignor shall be released from any further obligations or liabilities under this Agreement that have been assumed by such assignee(s) and such assignee(s) shall be considered as the Buyer or Seller, as the case may be, for all purposes of this Agreement with respect to such assignment(s)."

5) Schedule 3.1-A, Quality Specifications, "Specification A" is hereby deleted in its entirety and the following is substituted in lieu thereof:

**Specification A:**  
 McElroy Mine Coal  
 Weighted Average "As Received" Basis

|                                     | Contracted     |             | Suspension     |             |                        |             |
|-------------------------------------|----------------|-------------|----------------|-------------|------------------------|-------------|
|                                     | Half Month (A) |             | Half Month (A) |             | Applicable Lot (B) (D) |             |
|                                     | Non-Mitchell   | Mitchell(F) | Non-Mitchell   | Mitchell(F) | Non-Mitchell           | Mitchell(F) |
| Calorific Value (Btu/lb) min        | 12,400         | 12,650(H)   | 12,300         | 12,550(H)   | 12,150                 | 12,450      |
| Moisture (%) max                    | 7.00           | 6.50        | 7.50           | 7.25        | 8.00                   | 7.50        |
| Ash (%) max                         | 10.50          | 9.50(G)     | 11.50          | 10.00(G)    | 12.50                  | 10.50       |
| Volatile Matter (%) min             | 37.00          | 37.50       | 36.00          | 36.90       | 36.50                  | 36.00       |
| Hardgrove Grindability min          | 53             | 53          | 52             | 52          | 51                     | 51          |
| Lbs SO <sub>2</sub> /MM Btu max (C) | (E)            | (E)         | (I)            | (I)         | (I)                    | (I)         |
| Ash Fusion (H=½ W)                  | 2,050          | 2,100       | 2,000          | 2,030       | 1,975                  | 2,000       |
| °F Red Atm min                      |                |             |                |             |                        |             |

| (I) Contract Year | Suspension <sup>1</sup> |             |                        |             |
|-------------------|-------------------------|-------------|------------------------|-------------|
|                   | Half Month (A)          |             | Applicable Lot (B) (D) |             |
|                   | Non-Mitchell            | Mitchell(F) | Non-Mitchell           | Mitchell(F) |
| 2013              | 6.90                    | 6.81        | 7.25                   | 7.25        |
| 2014              | 7.10                    | 7.10        | 7.50                   | 7.45        |
| 2015              | 7.70                    | 7.70        | 8.10                   | 8.00        |
| 2016              | 7.50                    | 7.50        | 7.85                   | 7.75        |
| 2017-2021         | 6.90                    | 6.81        | 7.25                   | 7.25        |

<sup>1</sup> Notwithstanding the foregoing, Buyer shall have the right to suspend Seller if, during any half-month period, the combined weighted average lbs. SO<sub>2</sub>/MMBtu of McElroy/Non-Mitchell and Shoemaker specification coal, that is delivered, is greater than 7.41 lbs. SO<sub>2</sub>/MMBtu.

6) Schedule 3.1-A, Quality Specifications, "(E)" is hereby deleted in its entirety and the following is substituted in lieu thereof:

(E) = The SO<sub>2</sub> Specification shall be as follows:

**Weighted Average "As Received" Basis**

| Specification A:<br>McElroy Mine Coal<br>2007 | Contracted Half-Year<br>SO <sub>2</sub> Specification |          |
|---|---|----------|
|   | Non-Mitchell  | Mitchell |
|   | 5.50  | 5.39     |



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|      |      |      |
|------|------|------|
| 2008 | 5.65 | 5.54 |
| 2009 | 5.81 | 5.70 |
| 2010 | 5.92 | 5.81 |
| 2011 | 6.08 | 5.97 |
| 2012 | 6.52 | 6.42 |
| 2013 | 6.64 | 6.58 |
| 2014 | 6.76 | 6.69 |
| 2015 | 7.21 | 7.11 |
| 2016 | 7.15 | 7.05 |

**Specification B:**

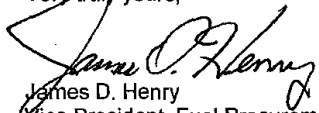
| <u>Shoemaker Mine Coal</u> | <u>Shoemaker</u> |
|----------------------------|------------------|
| 2009                       | 6.65             |
| 2010                       | 6.27             |
| 2011                       | 5.81             |
| 2012                       | 5.96             |
| 2013                       | 6.54             |
| 2014                       | 6.30             |
| 2015                       | 5.55             |
| 2016                       | 5.50             |

7) Schedule 7.2, Quality Adjustments, the final sentence of subsection "(b)" is hereby deleted in its entirety and the following is substituted in lieu thereof:

"An amount of three dollars (\$3.000) per Ton shall be deducted from the Contract Price for each Applicable Lot of Coal having an SO<sub>2</sub> value greater than 7.25 lbs. SO<sub>2</sub>/MMBtu."

Except as amended herein, all other provisions of the Agreement shall remain in full force and effect. If you are in agreement with the foregoing, kindly indicate your acceptance thereof by signing the enclosed duplicate of this letter in the space provided and by returning it to this office.

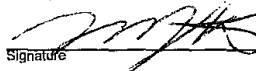
Very truly yours,

  
 James D. Henry  
 Vice President, Fuel Procurement  
 On behalf of American Electric Power  
 Service Corporation, as agent for  
 Ohio Power Company

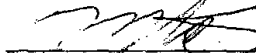
CMS  
 BMC  
 JSD

Agreed and Accepted by:

CONSOLIDATION COAL COMPANY

  
 Signature  
 Nick DeIulio  
 Name (Print)  
 President  
 Title

McELROY COAL COMPANY

  
 Signature  
 Nick DeIulio  
 Name (Print)  
 President  
 Title

BIM

BIM

**EXHIBIT A**  
**COAL PURCHASE AND SALE AGREEMENT NO. 07-77-05-900<sup>1</sup>**

**THIS COAL PURCHASE AND SALE AGREEMENT No. 07-77-05-900** ("Agreement") is entered into as of January 6, 2006 (the "Effective Date"), by and between Ohio Power Company ("Buyer"), and Consolidation Coal Company and McElroy Coal Company (collectively, "Seller"). Buyer and Seller are also referred to herein individually as a "Party" and collectively as the "Parties."

The Parties hereby agree as follows:

**DEFINITIONS**

**"Affiliated Plant"** means any electric power plant in which Buyer or its Affiliate has or acquires an ownership interest and for which Buyer or its Affiliate is responsible for acquiring coal.

**"Affiliate"** means American Electric Power Company, Inc. and its present and future subsidiary and associated operating companies. The present subsidiary and associate operating companies include AEP Texas Central Company, AEP Texas North Company, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Ohio Power Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, Ohio Valley Electric Corporation, Indiana-Kentucky Electric Corporation, and Cardinal Operating Company.

**"Agreement"** shall have the meaning set forth in the preamble.

**"Alternate Delivery Point"** means a barge or rail coal loading facility other than a Designated Delivery Point that Buyer may elect to reconsign Coal pursuant to Article II, Section 2.2.

**"Annual RFR Obligation"** shall have the meaning set forth in Article V, Section 5.2 (b)(i).

**"Applicable Lot"** means, as applicable, either (a) a minimum of three (3) barges in a single tow picked up by Buyer, or its agent, at a Designated Delivery Point; (b) a minimum of three (3) consecutive barges unloaded by Buyer in a single day; (c) the aggregate of the Coal delivered by conveyor belt at the Designated Delivery Point during any period in which a sample has been collected and analyzed pursuant to Schedule 8.1, subparagraph (2)(c); or (d) the aggregate of the Coal delivered by truck to the Designated Delivery Point on any one day.

**"Approved Production Source(s) and Approved Reserve(s) of Coal"** shall have the meanings set forth in Schedule 3.1-B.

**"Bankruptcy Proceeding"** means with respect to a Party or entity, such Party or entity (a) makes an assignment or any general arrangement for the benefit of creditors, (b) files a petition, has a petition filed against it or its assets and such petition is not rescinded within fifteen (15) days, or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy

<sup>1</sup> This conformed version of 07-77-05-900 reflects amendments to the Agreement through December 31, 2013.

or similar law for the protection of the Parties' creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), or (d) is unable to pay its debts as they fall due.

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

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

**"Buyer"** shall have the meaning set forth in the preamble.

**"Claiming Party"** shall have the meaning set forth in the definition of Force Majeure.

**"Coal"** means crushed, bituminous coal to be sold by Seller and purchased by Buyer, the quality of which shall conform to the Quality Specifications set forth in Article III, and which does not trigger Buyer's rejection rights under Article II. Such Coal shall (i) be substantially free from any extraneous materials (including, but not limited to mining debris, Synfuel, bone, slate, iron, steel, petroleum coke, earth, rock, pyrite, wood or blasting wire), (ii) be substantially consistent in quality throughout a shipment, (iii) meet the size required, and (iv) have no intermediate sizes (including fines) added or removed.

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

**"Contract Price"** means the price in United States dollars per Ton to be paid by Buyer to Seller for the purchase of Coal, applied on an as-received basis, and any other proper charges pursuant to this Agreement and shall have the meaning set forth in Article V.

**"Contract Quantity"** shall have the meaning set forth in Article II, Section 2.1.

**"Contract Year"** shall mean the period commencing January 1, 2007 and ending December 31, 2007 and each period thereafter commencing January 1 and ending the immediately succeeding December 31 during the Delivery Period.

**"Contract Half-Year"** shall mean either the first six months or the last six months of a Contract Year.

**"Credit Support Provider"** means the entity, if any, that supports the obligations of a Party through a guaranty in a format acceptable to the other Party (hereafter "Credit Support").

**"Defaulting Party"** shall have the meaning set forth in Article XVII, Section 17.1.

**"Delivery Period"** shall have the meaning set forth in Article I.

**"Designated Delivery Point"** means FOB the location at which the Coal is transferred onto Buyer's beltline from Seller's McElroy Mine at Buyer's Mitchell Plant and/or FOB barge at the barge loading facility described on Schedule 3.1-B.

**"Early Termination Date"** shall have the meaning set forth in Article XVII, Section 17.2.

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

**"Effective Date"** shall have the meaning set forth in the preamble.

**"Event of Default"** shall have the meaning set forth in Article XVII, Section 17.1.

**"FOB"** shall have the meaning given to such term as provided in the Uniform Commercial Code of the State of New York.

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

**"Free Loading Day"** means a loading day for which Seller shall not be obligated to pay demurrage charges. A loading day shall commence at 7:00 a.m. of a calendar day and end at 7:00 a.m. the next calendar day. The first Free Loading Day shall commence at the later of the first 7:00 a.m. immediately following the delivery of said barge to a Designated Delivery Point, or 7:00 a.m. on the barge loading date specified in Seller's request for placement of barges.

**"Free Loading Period"** means a period of two consecutive Free Loading Days. The Free Loading Period for a barge delivered shall end forty-eight (48) consecutive hours after the period commenced.

**"Government Imposition"** shall have the meaning set forth in Article IX, Section 9.2.

**"Half-Month"** means, with respect to any calendar month, either (a) the period from and including the first day of such month through and including the fifteenth day of such month or (b) the period from and including the sixteenth day of such month through and including the last day of such month.

**"Imaged Agreement"** shall have the meaning set forth in Article XXVII.

**"Interest Rate"** shall have the meaning set forth in Article IV.

**"Liabilities"** shall have the meaning set forth in Article XV.

**"Material Adverse Change"** means a material change in the condition (financial or otherwise), net worth, properties or operations or in economic conditions, which, when taken as a whole can reasonably be

anticipated to materially impair the ability of such Party, or such Party's Credit Support Provider, as applicable, to fulfill its obligations under this Agreement or Credit Support, respectively.

**"Negotiation Period"** means the period beginning no earlier than January 1 and no later than April 1 and concluding on or before June 30 of the Contract Year identified in Table 5.1.2 for Buyer and Seller to enter good faith negotiations and make good faith efforts to negotiate the Segment Prices for an applicable Segment.

**"New Taxes"** means any Taxes, fees, or assessments enacted and effective after the Effective Date of this Agreement, including, without limitation, that portion of any Taxes or New Taxes that constitutes an increase.

**"Non-Defaulting Party"** shall have the meaning set forth in Article XVII, Section 17.2.

**"Northern Appalachian Coal"** means all bituminous coal mined in the states of Ohio, Maryland, Western Pennsylvania and Northern West Virginia available to Buyer for delivery FOB Barge to Buyer's Plant at the time Buyer notifies Seller pursuant to Section 5.2(c)(ii) of this Agreement of Buyer's receipt of an offer to enter into a new agreement to supply such coal.

**"Out-of-System Plant"** means any electric power plant in which Buyer or its Affiliate has or acquires an ownership interest and for which Buyer or its Affiliate is not responsible for acquiring coal. As of the date of this Agreement, the following are the Out-of-System Plants.

| <u>Company Name</u>  | <u>Plant Name</u> | <u>Percent Ownership</u> |
|----------------------|-------------------|--------------------------|
| Cinergy              | Zimmer            | 25.4%                    |
| Cinergy              | Beckjord          | 12.50%                   |
| Dayton Power & Light | Stuart            | 26.0%                    |

**"Performance Assurance"** means assurances of performance in accordance with Section 2-609 of the Uniform Commercial Code.

**"Plant"** or, collectively, **"Plants"** means the Mitchell, Gavin and Cardinal Plants owned or operated by Buyer.

**"Quality Specifications"** means the quality characteristics on an "As-Received" basis, using ASTM standards, specified on Schedule 3.1-A hereto.

**"Reduced Tons"** shall have the meaning set forth in Article III.

**"Segment Price"** means the price in United States dollars per Ton of Coal for a specified Segment A, B, or C in relation to the specific Quality Specification and the Tons for such Quality Specification, as applicable for the Segment Pricing Period that is negotiated or established during a Negotiation Period, or determined in accordance with Section 5.2(c).

**"Segment Pricing"** means the determination of the McElroy/Non-Mitchell Segment Price in accordance with Section 5.2(a).

**"Segment Pricing Period"** means the identified Contract Years in Table 5.1.2 for which the negotiated Segment Prices shall apply.

**"Seller"** shall have the meaning set forth in the preamble.

**"Selling Price"** shall have the meaning set forth in Article VII.

**"SO<sub>2</sub>"** means sulfur dioxide and **"SO<sub>2</sub> per MMBtu"** means sulfur dioxide per million Btu.

**"Suspension"** shall have the meaning set forth in Article II, Section 2.5.

**"Synfuel"** means synthetic fuel qualified for tax credits under Section 29 of the Internal Revenue Code of 1986, as amended.

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

**"Term"** shall have the meaning set forth in Article I.

**"Third Party Impositions"** shall have the meaning set forth in Article VI, Section 6.1.

**"Ton"** means 2,000 pounds avoirdupois weight.

**"Transportation Specifications"** means the timing and tonnage requirements for shipment(s) set forth in Article II.

**"Transporter"** means the entity or entities transporting Coal on behalf of Seller to and at the Designated Delivery Point or on behalf of Buyer or Buyer's designee from the Designated Delivery Point.

**"Uniform Commercial Code"** or **"UCC"** shall have the meaning set forth in Article XXV.

## ARTICLE I

### Term and Delivery Period

The term of this Agreement (the "Term") shall commence on the Effective Date, and shall remain in effect until December 31, 2021, except as provided elsewhere in this Agreement.

The delivery period of this Agreement (the "Delivery Period") shall be from January 1, 2007, through December 31, 2021, except as provided elsewhere in this Agreement.

## ARTICLE II

### Obligations and Deliveries

**Section 2.1. Contract Quantity.** During the Delivery Period, and subject to Article V herein, Seller agrees to sell and deliver to the Buyer and Buyer agrees to purchase and accept from Seller, at the Designated Delivery Point, the quantity of Coal set forth herein and any additional quantity of Coal to be delivered during the applicable Contract Year pursuant to Section 2.5(e) and Article XII (the "Contract Quantity").

**Table 2.1.1**

| <u>Contract Year</u> | <u>McElroy<br/>Tons Per Year</u> |
|----------------------|----------------------------------|
| 2014                 | 2,000,000                        |
| 2015                 | 2,000,000                        |
| 2016                 | 2,000,000                        |
| 2017                 | 2,000,000                        |
| 2018                 | 2,000,000                        |
| 2019                 | 2,000,000                        |
| 2020                 | 2,000,000                        |
| 2021                 | 2,000,000                        |

Unless otherwise mutually agreed upon by the Parties, such tonnage shall be delivered on an approximately ratable basis during each month of each Contract Year.

**Section 2.2. Reconsignment and Resale Rights.** From time to time, and at any time, Buyer shall have the right, but not the obligation, to have all or any part of the Contract Quantity reconsigned for delivery to any Affiliated Plant. In the case of an Out-of-System Plant, Buyer shall be entitled to reconsign for delivery to such Out-of-System Plant the minimum number of Tons which would either (i) allow such Out-of-System Plant to generate, on an on-going basis, the percentage of the Plant's total power output that is equal to Buyer's or its Affiliates' percentage ownership interest in such Out-of-System Plant; or (ii) allow such Out-of-System Plant to operate, on an on-going basis, at minimum load. Nothing in this provision shall be construed as requiring Seller to deliver more than the Contract Quantity in a given Contract Year.

Should Buyer exercise its right to reconsign Coal and such Coal will be delivered to an Alternate Delivery Point, Seller shall arrange for transport to such Alternate Delivery Point and Buyer shall be responsible for all additional costs incurred by Seller to deliver such reconsigned Coal to such Alternate Delivery Point. Buyer shall not have the right to trade or resell the Coal hereunder to any non-Affiliated Plant or non-Out-of-System Plant except for any deliveries of Coal which were suspended and which Buyer elects to make up pursuant to Section 2.5.

**Section 2.3. Scheduling.** Seller will advise Buyer of its desired loading dates and delivery schedule. The Parties will work together in good faith to agree on a reasonable and mutually acceptable delivery schedule within the Term and within each month during the Term based on the annual Contract Quantity.

**Section 2.4 Delivery.**

(a) The Coal shall be delivered to Buyer at the Designated Delivery Point in accordance with the Transportation Specifications detailed in Schedule 2.4 (attached hereto and hereby made a part of this Agreement).

Seller shall be responsible for any costs or charges imposed on or associated with the delivery of the Contract Quantity up to the Designated Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Contract Quantity upon taking title to the Coal at the Designated Delivery Point in accordance with Article XV.

If a Party is charged for any increased transportation charges, penalties, or other transportation costs, including demurrage, attributable to the other Party's failure to timely arrange for delivery, load or unload the Coal in accordance with the terms of this Agreement, including the timing and tonnage requirements of the Transportation Specifications, and if such failure is not due to Force Majeure, such failing Party shall reimburse the other for such charges.

Each Party shall immediately contact the other Party in the event of a curtailment or interruption in the delivery or receipt of Coal hereunder. Each Party shall contact the other Party with as much advance notice as reasonably possible regarding any such impending curtailment or interruption.

Notwithstanding the above, solely for reasons of Seller's inability to produce Coal from the Approved Production Source in the quantities and/or of the quality required by this Agreement and not for financial reasons, Seller shall have the right, with Buyer's prior written approval, such approval not to be unreasonably withheld, to substitute Coal from another mine wholly owned by Seller or its affiliates, provided that any deliveries from such substitute source shall meet the quality specifications set forth in this Agreement and be otherwise suitable for use at the applicable Plant(s) and be made to Buyer without Buyer incurring any costs greater than Buyer's costs would have been if the deliveries to the Plant would have been from the Approved Production Source and further provided that any deliveries to the Plant from such substitute source do not adversely affect Buyer's transportation logistics.

**Section 2.5. Rejection and Suspension.** In addition to the price adjustments provided for in Article VII, Buyer shall have the following rights and remedies upon Seller's failure to conform with the requirements as set forth in Article III, provided that if the Coal is delivered to the Mitchell Plant, or if the Coal is delivered to a Plant other than the Mitchell Plant and Seller fails to timely provide Buyer with Seller's short proximate analysis of the Coal pursuant to Schedule 8.1, Buyer shall also be entitled to all other remedies at law or in equity, subject to Article XXVIII.

(a) (i) Buyer shall have the right to reject all or any part of any barge, prior to unloading hereunder, if the Coal therein fails to conform to the requirements set forth in footnote (D) on Schedule 3.1-A.

(ii) Buyer shall have the right to reject any Applicable Lot prior to unloading hereunder, if the Coal therein fails to conform to the Applicable Lot "Suspension" specifications set forth on Schedule 3.1-A, based on Seller's analysis provided in accordance with Schedule 8.1. Should Buyer exercise such right of rejection, it shall notify Seller by telephone upon discovery of the nonconformance, such notification to be promptly confirmed in writing.

(iii) Seller shall immediately discontinue and Buyer shall have the right to reject further conveyor and/or truck shipments to the Mitchell Plant if Seller's analytical results of an Applicable Lot (based on Seller's analysis of Buyer's individual sample or samples provided in accordance with Schedule 8.1, subparagraph (2)(c)) fails to conform to the Mitchell Plant Applicable Lot "Suspension" specifications, or Buyer determines that the Coal does not meet the requirements in Schedule 3.1-A, footnote (D). Seller or Buyer shall promptly notify the other Party by telephone upon discovery of the nonconformance. Such discontinuance shall continue until Seller provides Buyer with written notice (which written notice may be by electronic mail) that the cause of the nonconformance has been corrected. In no event shall Seller be required to remove Coal that has been delivered to the Mitchell Plant stockpile.



(iv) Subject to Buyer having sufficient barge capacity, Seller shall make up such discontinued or rejected shipment(s) within thirty (30) days; otherwise Seller shall make up such rejected shipment(s) in accordance with a mutually agreed upon schedule.

(b) (i) Buyer shall have the right to suspend all further barge shipments of Coal hereunder to any Plant if: (A) there are six (6) barges delivered to such Plant that fail to meet the requirements in footnote (D), as set forth in Schedule 3.1-A, whether rejected or not, in any thirty (30) consecutive day period; (B) there are six (6) Applicable Lots delivered to such Plant that fail to meet the defined minimum or exceed the defined maximum Applicable Lot "Suspension" specifications as set forth in Schedule 3.1 A, whether rejected or not, in any thirty (30) consecutive day period; or (C) the Coal quality delivered to such Plant fails to meet the defined minimum or exceeds the defined maximum Half-Month "Suspension" specifications applicable under Article III. Should Buyer exercise such right to suspend further shipments, Buyer shall notify Seller of its exercise of right of suspension within fifteen (15) calendar days after the day or Half-Month period in which such failure occurs.

(ii) Buyer shall have the right to suspend all further conveyor and/or truck shipments of Coal hereunder to the Mitchell Plant if: (A) there are six (6) Applicable Lots, with respect to conveyor shipments, or three (3) Applicable Lots, with respect to truck shipments, delivered to such Plant that fail to meet the defined minimum or exceeds the defined maximum Applicable Lot "Suspension" specifications or the requirements in footnote (D), all as set forth in Schedule 3.1-A, whether discontinued or not, in any thirty (30) consecutive day period; or (B) the Coal quality delivered to such Plant fails to meet the defined minimum or exceeds the defined maximum Half-Month "Suspension" specifications applicable under Article III. Should Buyer exercise such right to suspend further shipments, Buyer shall notify Seller of its exercise of right of suspension within fifteen (15) calendar days after the day or Half-Month period in which such failure occurs.

(c) Upon receipt of Buyer's notice of suspension, Seller shall immediately suspend further shipments and make every reasonable effort to correct the conditions giving rise to the shipment(s) of Coal failing to conform to such specifications or requirements. Seller shall inform Buyer in writing on a weekly basis of such corrective actions taken by Seller.

During such suspension, Seller shall permit Buyer's reasonable access to the production sources and related facilities hereunder and to engineering data related thereto. Buyer shall have the right, but not the duty, to request and participate in discussions with Seller relating to the matter and to recommend procedures to correct said matter.

Such suspension shall continue until Seller provides Buyer with assurances in writing that are satisfactory to Buyer, based upon Buyer's reasonable determination, that the conditions causing shipments of Coal not in accordance with this Agreement have been corrected and that Seller can and shall deliver Coal meeting the Half-Month "Suspension" specifications of Schedule 3.1-A.

Upon receipt by Buyer of Seller's satisfactory written assurances, shipments shall be resumed at the rate specified in Article II.

(d) In the event that: (i) Seller fails to provide Buyer with such assurances within ten (10) days after the date of Buyer's notice of suspension as described in this Section 2.5; or (ii) having provided such assurances, Seller fails to correct such conditions and resume shipments in the ensuing sixty (60) days thereafter; or (iii) after such resumption of deliveries, there are: six (6) barges delivered to the affected Plant that fail to meet the requirements in footnote (D), as set forth in Schedule 3.1-A or six (6) Applicable

Lots, with respect to barge or conveyor shipments, or three (3) Applicable Lots, with respect to truck shipments, delivered to the affected Plant during the ensuing thirty (30) days that fall below the minimum or exceed the maximum Applicable Lot "Suspension" specification(s) which had specifically resulted in Buyer's suspension, then such event shall constitute an Event of Default under Article XVII hereof.

(e) Shipments suspended pursuant to this Article II hereof shall be made up in accordance with a mutually agreeable schedule. The Parties shall make reasonable efforts to make up such shipments within 365 calendar days following resumption of shipments. Following Seller's receipt of Buyer's notice of suspension and prior to the making up of all suspended shipments, Seller agrees to not sell coal from the Approved Production Sources that is not at the time of Seller's receipt of such notice contractually committed to any third party without first offering such coal to Buyer as make up tonnage.

Section 2.6. Non-Binding Estimate. No later than October 1 of any Contract Year, Buyer shall provide in writing to Seller an estimate of the number of Tons of the annual Contract Quantity it plans on being delivered to each of the Plants during the immediately following Contract Year. At its election, Buyer may periodically provide updates to such estimate. Such estimates, as updated, of individual Plant quantities shall be nonbinding, except that the maximum number of Tons for which Buyer may declare relief for a Plant for (i) suspended shipments pursuant to Section 2.5(e), (ii) unsatisfactory performance pursuant to Article III, (iii) Government Imposition pursuant to Section 9.2(a), or (iv) Force Majeure pursuant to Article XII shall be the last tonnage estimate provided by Buyer to Seller for Coal to be delivered to the Plant prior to the occurrence of (i), (ii), (iii) or (iv), provided that if such estimate is provided less than thirty (30) days prior to such occurrence, then the immediately preceding estimate shall constitute the maximum number of Tons for which Buyer may request relief.

### ARTICLE III

#### Quality Specifications and Unsatisfactory Performance

Seller shall cause all Coal delivered to Buyer, pursuant to this Agreement, to comply with Quality Specifications set forth on Schedule 3.1-A.

If (a) Buyer can demonstrate that the chemical composition of the Coal, for other than the specifications set forth on Schedule 3.1-A, has materially changed since the date of this Agreement; and (b) Buyer in its reasonable judgment determines through operating experience that the Coal therefrom, even if the Coal meets the requirements and specifications of Schedule 3.1-A, (i) causes unsatisfactory performance (including but not limited to significant slagging or fouling) at the affected Plant(s), or (ii) requires Buyer to modify equipment, facilities, practices, or processes at the affected Plant(s) to correct such unsatisfactory performance, then, in such event, Buyer shall provide Seller with written notice thereof, specifying the basis of such unsatisfactory performance or modification requirement. During the thirty (30) day period following receipt of Buyer's notice, Seller shall be provided access to Buyer's Plant(s) and all relevant documentation in Buyer's possession in order to verify the unsatisfactory performance. Seller shall then have an additional thirty (30) days to supply a substitute Coal under the terms of this Agreement from either an Approved Production Source or an alternate source that does not, in Buyer's reasonable judgment, cause such unsatisfactory performance. If Seller is unable or unwilling to supply a substitute Coal, then immediately following such second thirty (30) day period, Seller shall notify Buyer that Seller is

either reducing deliveries by the number of Tons that Buyer reasonably believes is necessary in order for the Plant(s) to operate satisfactorily or allowing Buyer the right to resell such Tons to any third party(ies) (such reduced tonnage being the "Reduced Tons"). As of the date of the commencement of the next subsequent Segment Pricing Period, the Contract Quantity shall be permanently reduced by the Reduced Tons.

Upon such reduction (or termination of the Agreement if the Contract Quantity is hereby reduced to zero), the Contract Quantity shall be reduced accordingly and neither Party shall have any further obligation to the other Party for such reduced quantity of Coal, except for payment for prior performance. Additionally, the Parties agree that this reduction or termination shall not constitute an Event of Default as provided for in Article XVII of this Agreement and, therefore, no damages shall apply.

#### ARTICLE IV

##### Billing and Payment; Financial Reports

Buyer shall pay Seller by electronic transfer in United States Funds for all Coal received, unloaded, taken into account, and accepted hereunder in accordance with the following:

Account Name: Ohio Valley Resources, Inc.  
Bank: Fifth Third Bank  
Account Number: [REDACTED]  
ABA Number: [REDACTED]

Any change in Sellers' remittance information shall be provided in a letter (containing the bank name, account name, ABA routing number, and account number) which shall be signed by a duly authorized representative of Seller.

Buyer shall submit to Seller the weight, analytical, and cost data on such Coal taken into account during each Half-Month at each respective consigned destination within five (5) Business Days after each such Half-Month period. Thereafter, Seller shall submit to Buyer, within two (2) Business Days of receipt of such information, an invoice covering such Half-Month deliveries at each respective consigned destination, which invoice shall include a reference to this Agreement's contract number 07-77-05-900.

Buyer shall make payment by electronic transfer to Seller within twenty (20) calendar days after the Half-Month period, provided Seller's invoice is submitted in accordance with the preceding paragraph. If Buyer in good faith reasonably disputes an invoice, it shall provide a written explanation specifying in detail the basis for the dispute. Nevertheless, Buyer shall pay the entire amount of the invoice no later than the due date. Within ten (10) days following resolution of any dispute involving an invoice, any amount owing either Party shall be paid with interest (the prime rate of interest for United States dollars as published from time to time under the section titled, "Money Rates" by *The Wall Street Journal*, plus two percent [2%] per annum, but not to exceed the maximum applicable lawful interest rate [hereinafter "Interest Rate"]). If any Party fails to pay amounts under this Agreement when due, the aggrieved Party shall have the right to suspend performance under this Agreement until such amounts plus interest have been paid, and/or, subject to Article XXVIII, exercise any remedy available at law or in equity to enforce payment of such amount plus interest at the Interest Rate defined herein.

The payment terms set forth in this Article IV are based on the financial condition of Buyer as of the date of this Agreement. Seller shall be entitled to Performance Assurance regarding payment in accordance with item 8) of Section 17.1 herein, as well as any remedies to which Seller is entitled pursuant to Section 2-702 of the UCC.

If requested by either Party, the other Party (or its Guarantor) shall deliver to the requesting Party (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of the Party's portion of the annual report containing audited consolidated financial statements for such fiscal year for such Party and (ii) within sixty (60) days after the end of each of its first three (3) quarters of each fiscal year, a copy of the quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the Party. In all cases, the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principals, provided however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification, and delivery of the statements.

In the event a Party's financial statements are filed with the Securities and Exchange Commission and are available at www.sec.gov, then such Party has fulfilled its obligations hereunder.

**ARTICLE V**  
Contract Price

Section 5.1. Contract Price.

**Table 5.1.1**

| <b>Contract Year</b> | <b>McElroy/<br/>Non-Mitchell<sup>1</sup></b> | <b>McElroy/<br/>Mitchell<sup>1</sup></b> |
|----------------------|--|--|
| 2014                 | \$57.055(a)                                  | \$58.055                                 |
| 2015                 | \$53.755(b)                                  | \$54.755                                 |
| 2016                 | \$57.060(c)                                  | \$58.060                                 |

<sup>1</sup> The base cost of the WV Special Reclamation Tax, \$0.07 per Ton, is considered, and included in all negotiated pricing as required by the WV legislature and continued until further notice. Should the WV Special Reclamation Tax be increased, that will require an increase in Contract Prices

- (a) The Contract Price reflects 667,000 Tons at \$65.00 per Ton, 666,000 Tons at \$53.34 per Ton and 667,000 Tons at \$52.82 per Ton.
- (b) The Contract Price reflects 666,000 Tons at \$53.34 per Ton and 667,000 Tons at \$54.17 per Ton. The remaining Tons for this Contract Year shall be priced in accordance with Article V, Section 5.1 and Section 5.2.
- (c) The Contract Price reflects 667,000 Tons at \$57.060 per Ton. The remaining Tons for this Contract Year shall be priced in accordance with Article V, Section 5.1 and Section 5.2.

The total Contract Quantity set forth in Section 2.1 shall be divided into three (3) segments, i.e. Segment A, Segment B and Segment C. The Contract Price for each Segment shall be determined for each Segment Pricing Period in accordance with the following schedule:

**Table 5.1.2**

| PRICING SCHEDULE          |                                |                |  |  |
|---------------------------|--------------------------------|----------------|--|--|
| <u>Negotiation Period</u> | <u>Segment Pricing Periods</u> | <u>Segment</u> | <u>Annual Segment Tons<sup>1,2</sup></u> | <u>Annual McElroy Tons<sup>1</sup></u> |
| 2011                      | 2014                           | B              | 667,000                                  | 667,000                                |
| 2012                      | 2014 through 2015              | C              | 666,000                                  | 666,000                                |
| 2013                      | 2014 through 2016              | A              | 667,000                                  | 667,000                                |
| 2014                      | 2015 through 2017              | B              | 667,000                                  | 667,000                                |
| 2015                      | 2016 through 2018              | C              | 666,000                                  | 666,000                                |
| 2016                      | 2017 through 2019              | A              | 667,000                                  | 667,000                                |
| 2017                      | 2018 through 2020              | B              | 667,000                                  | 667,000                                |
| 2018                      | 2019 through 2021              | C              | 666,000                                  | 666,000                                |
| 2019                      | 2020 through 2021              | A              | 667,000                                  | 667,000                                |
| 2020                      | 2021                           | B              | 667,000                                  | 667,000                                |

<sup>1</sup>Tons referenced in this Table 5.1.2 are for the identified Segment of each Contract Year referenced within a Segment Pricing Period.

<sup>2</sup>The Annual Segment Tons are as of the Effective Date of this Agreement. Should the Parties be unable to agree upon the Segment Price during a Negotiation Period(s), the Annual Segment Tons may be less than those shown after the first Negotiation Period for the applicable Segment(s). Please refer to Section 5.2 for more detail.

**Section 5.2. Segment Pricing, Contract Price and Annual Tonnage Determination.** The Segment Pricing for each Segment not yet determined and the annual tonnage determination for each Contract Year shall be determined under this Section 5.2 and in accordance with the Pricing Schedule Table 5.1.2 and the Annual RFR Obligation described in Section 5.2(c) below.

(a) **Segment Pricing.** Seller shall provide to Buyer the proposed SO2 specifications for the applicable Segment(s) of Coal being priced during such Negotiation Period by January 31<sup>st</sup> of the Negotiation Period. During the Negotiation Period, the Parties shall commence to negotiate in good faith and attempt to agree on a McElroy/Non-Mitchell Segment Price for the applicable McElroy Tons identified in Table 5.1.2. The agreed upon Segment Pricing shall then be utilized to establish the Contract Price for the respective Contract Year for each particular Quality Specification. If the Parties fail to agree upon the Segment Pricing during a Negotiation Period, then there will not be Segment Prices for the applicable Segment(s). The effect on the Contract Price and the effect on a Contract Year's annual Tons due to the Parties agreeing to or not agreeing to Segment Pricing shall be addressed in the other provisions of this Article V.

(b) **Contract Price and Contract Year Tonnage.** Upon the passing of the timeframe for all Negotiation Periods for the Segments of a Contract Year, the Contract Price and the Contract Year tonnage requirement shall be determined as follows:

(i) If the Parties agree on Segment Pricing for each of the Segments in a Contract Year within the applicable Negotiation Periods, then the Segment Prices for each of the Segments of a Contract Year shall be weight averaged based on the applicable Segment Tons and Segment Price for each Segment to determine the Contract Price for such Contract Year and the annual Contract Quantity Tons for such Contract Year shall remain as stated in the Contract Quantity Table 2.1.1. The McElroy/Mitchell Contract Price shall be calculated by adding one dollar (\$1.00) per Ton to the McElroy/Non-Mitchell Segment Price.

(ii) If the Parties are unable to agree on Segment Pricing for any of the Segments in a Contract Year within the applicable Negotiation Periods, then the Segment Prices for each of the Segments of a

Contract Year shall be weight averaged based on the applicable Segment Tons for each Segment in which Segment Pricing was agreed to by the Parties to determine the Contract Price for such Contract Year and the annual Contract Quantity Tons for such Contract Year shall be reduced by the annual Tons applicable to any Segment of a Contract Year in which Segment Pricing was not determined, subject to Section 5.2(c) and the Annual RFR Obligation.

**EXAMPLES FOR SECTION 5.2(b)(i) AND (ii) FOR REFERENCE USE ONLY:**

Example 1. If the Parties agree on the Segment Pricing for Segment C during the 2012 Negotiation Period, but are unable to agree on Segment Pricing for Segment A during the 2013 Negotiation Period for Contract Years 2014 through 2016, then the Annual Contract Quantity for each of Contract Years 2014 through 2016 would be reduced by the amount of Segment A Tons, and further subject to the Annual RFR Obligation and related provisions provided in this Section 5.2.

Example 2. If the Parties agree on the Segment Pricing for Segment C during the 2012 Negotiation Period, but are unable to agree on Segment Pricing for Segment A during the 2013 Negotiation Period only for Contract Year 2016, then only the Annual Contract Quantity for Contract Year 2016 would be reduced by the amount of the Segment A Tons, and further subject to the Annual RFR Obligation and other related provisions provided in this Section 5.2.

(c) **Annual RFR Obligation and Annual Tonnage Determination.** If the Parties fail to agree on the Segment Pricing for a Segment during a Negotiation Period, the following procedures shall apply:

(i) If the Parties fail to agree on Segment Pricing for a Segment during a Negotiation Period, then Buyer shall have the obligation to offer to Seller the first right to sell to Buyer, and Seller shall have the obligation to propose to Buyer the first right to buy from Seller, Tons totaling not more than the annual Tons for such applicable Segment (the number of such annual Tons that Buyer is obligated to offer to Seller or Seller is obligated to propose to Buyer being the "Annual RFR Obligation"). A Party's Annual RFR Obligation shall be reduced as follows, and if multiple Segment Tons are included in the Annual RFR Obligation then timing for such reduction shall be in accordance with Section 5.2(c)(iv):

(1) Any Tons that Seller agrees to deliver to Buyer pursuant to Section 5.2(c)(ii) or that Buyer agrees to accept from Seller pursuant to Section 5.2(c)(iii) shall be deducted from each Party's Annual RFR Obligation;

(2) Any Tons offered by Buyer to Seller that Seller declines to supply to Buyer shall be deducted from Buyer's Annual RFR Obligation in the amount equal to the tonnage offered by Buyer but not Seller's Annual RFR Obligation; and

(3) Any Tons offered by Seller to Buyer that Buyer declines to accept from Seller shall be deducted from Seller's Annual RFR Obligation in the amount equal to the tonnage offered by Seller but not Buyer's Annual RFR Obligation;

(4) Any Tons that become part of a Party's Annual RFR Obligation that reach their RFR Tonnage Expiration Date. "RFR Tonnage Expiration Date" as used herein shall be the end of day on December 31st of each respective Contract Year associated with the Segment Tons in which the Segment Tons are scheduled for delivery.

**EXAMPLES FOR SECTION 5.2(c)(i)(4) FOR REFERENCE USE ONLY:**

Example 1. If the Parties do not agree on the Segment Pricing for all Segment A Tons during the 2013 Negotiation Period, the 1,300,000 Segment A Tons that are scheduled for delivery in

Contract Year 2014 shall have an RFR Tonnage Expiration Date of December 31, 2014. If Seller does not agree to supply any Segment A Tons offered pursuant to Buyer's Offer in accordance with Section 5.2(c)(ii) below, and Buyer does not purchase any Segment A Tons offered pursuant to Seller's Proposal in accordance with Section 5.2(c)(iii) below, the Parties shall have no further obligation with respect to the 1,300,000 Segment A Tons scheduled for delivery in Contract Year 2014 following December 31, 2014, and these Tons shall be excised from the Agreement. However, the 1,300,000 Segment A Tons that are scheduled for delivery in each of the Contract Years 2015 and 2016 shall remain part of the Agreement, with RFR Tonnage Expiration Dates of December 31, 2015 and December 31, 2016, respectively.

Example 2. If the Parties have agreed on the Segment Pricing for Segment A and Segment B Tons for Contract Year 2016 as of the 2015 Negotiation Period, but do not agree on Segment Pricing for all Segment C Tons during the 2015 Negotiation Period, the 1,300,000 Segment C Tons that are scheduled for delivery in Contract Year 2016 shall have an RFR Tonnage Expiration Date of December 31, 2016. Thereafter, if for example Seller agrees to supply 400,000 Segment C Tons offered pursuant to Buyer's Offer in accordance with Section 5.2(c)(ii) below, and Buyer does not purchase any Segment C Tons offered pursuant to Seller's Proposal in accordance with Section 5.2(c)(iii) below, the Parties shall have no further obligation with respect to 900,000 Segment C Tons scheduled for delivery in Contract Year 2016 following December 31, 2016, and these Tons shall be excised from the Agreement. However, Seller shall deliver and Buyer shall accept delivery of the 400,000 Tons in accordance with the terms of Buyer's Offer accepted by Seller pursuant to Section 5.2(c)(ii) below. In addition, the 1,300,000 Segment C Tons that are scheduled for delivery in each of the Contract Years 2017 and 2018 shall remain part of the Agreement, with RFR Tonnage Expiration Dates of December 31, 2017 and December 31, 2018, respectively.

(ii) Prior to Buyer accepting any offer from a non-affiliated third party in an arm's length transaction to purchase any Northern Appalachian Coal ("Buyer's Offer"), up to the Buyer's Annual RFR Obligation, to be delivered by barge to the Plants in substitution for the Segments A, B and C Tons that are scheduled for delivery in each Contract Year, Buyer must first notify Seller of the Tons, term and the Equivalent Offer Prices. The prices offered by the third party shall be adjusted to the equivalent Contract Price at the Designated Delivery Point by being quality adjusted and being adjusted for the delivered cost FOB Barge, Gavin Plant, and shall be calculated as set forth in Schedule 5.2(c)(ii) (the resulting price being the "Equivalent Offer Price"). Tons purchased through options available to Buyer pursuant to any agreement(s) shall not be deemed to be Tons offered to Buyer. Buyer's Offers, and the Tons and Equivalent Offer Prices included therein, may extend beyond the then current Contract Year.

Within five (5) Business Days after receiving Buyer's notice, Seller shall advise Buyer whether or not Seller is willing to supply such Tons for the Segment to which such Tons are credited and at the Equivalent Offer Price(s). If Seller agrees to the foregoing, then such Tons shall be added to the Contract Quantity for such term and the Equivalent Offer Price shall be the McElroy/Non-Mitchell price for the applicable Segment and shall be weight averaged with the Segment Pricing then in effect for the remaining Segments. If there are multiple offers and acceptances by Seller, then, for the applicable Segment, the tonnage and Equivalent Offer Price for each offer accepted shall be weight averaged with all other accepted offers to determine the McElroy/Non-Mitchell price for such Segment. The McElroy/Mitchell prices shall be established pursuant to Section 5.2(a). The Contract Quantity for calculating such weighted average shall be determined pursuant to Section 5.2(c)(iv) below. The corresponding Contract Prices shall be determined as set forth in Section 5.2(a). After each such recalculation of the Contract Prices, a retroactive price adjustment applicable to all Tons delivered and paid for by Buyer since January 1 of the

applicable Contract Year shall be made by Buyer and included with or credited against any payments due Seller pursuant to Article IV within thirty (30) days following the effective date of the revised weighted average price(s).

Failure of Seller to reply to Buyer's offer within the five (5) Business Day period will be considered Seller's rejection of the opportunity to supply such quantity of Coal.

Should Buyer not purchase the Tons offered pursuant to Buyer's Offer, the reduction in Buyer's Annual RFR Obligation shall not occur and Buyer shall again be obligated to Seller for such Tons. Should the Equivalent Offer Price of a Buyer's Offer submitted pursuant to this Section 5.2(c)(ii) increase due to further negotiations between Buyer and a third party, then Buyer shall resubmit such Buyer's Offer to Seller.

(iii) Prior to Seller finalizing any proposal to sell Coal in an arm's length transaction from an Approved Production Source ("Seller's Proposal"), up to Seller's Annual RFR Obligation, Seller must first notify Buyer of the Tons, term and the Equivalent Proposal Prices for such Coal. Tons sold through options available to or provided by Seller pursuant to any agreements shall not be deemed to be proposals offered by Seller. The price of each proposal shall be adjusted for any difference in quality between (1) the Btu specification in the third party proposal and the Contracted Half-Month Btu Quality Specifications set forth in Schedule 3.1-A, and (2) the SO<sub>2</sub> specification set forth in the third party proposal and the SO<sub>2</sub> specification for the Contract Year(s) in which deliveries shall occur, as initially furnished by Seller, with the adjusted price to be expressed in dollars per Ton, FOB barge, Designated Delivery Point, and converted to a cents-per-MMBtu basis (the resulting price being the "Equivalent Proposal Price"). Seller's Proposals and the Tons and Equivalent Proposal Prices included therein may extend beyond the then current Contract Year.

Within five (5) Business Days after receiving Seller's notice, Buyer shall advise Seller whether or not Buyer is willing to accept delivery of such Tons for the Segment to which such Tons are credited and at the Equivalent Proposal Price(s). If Buyer agrees to the foregoing, then such Tons shall be added to the Contract Quantity for such term and the Equivalent Proposal Price(s) shall be the McElroy/Non-Mitchell price for the applicable Segment and shall be weight averaged with the Segment Prices then in effect for the remaining Segments. If there are multiple proposals and acceptances by Buyer, then, for the applicable Segment, the tonnage and Equivalent Proposal Price for each proposal accepted shall be weight averaged with all other proposals accepted to determine the McElroy/Non-Mitchell price for such Segment. The McElroy/Mitchell prices shall be established pursuant to Section 5.2(a). The corresponding Contract Prices shall be determined as set forth in Section 5.2(a). After each such recalculation of the Contract Prices, a retroactive price adjustment applicable to all Tons delivered and paid for by Buyer since January 1 of the applicable Contract Year shall be made by Buyer and included with or credited against any payments due Seller pursuant to Article IV within thirty (30) days following the effective date of the revised weighted average price(s).

Failure of Buyer to reply to Seller within the five (5) Business Day period will be considered Buyer's rejection of the opportunity to accept delivery of such quantity of Coal.

Should Seller not sell the Tons proposed pursuant to Seller's Proposal, the reduction in Seller's Annual RFR Obligation shall not occur and Seller shall again be obligated to Buyer for such Tons. Should the Equivalent Proposal Price of a Seller's Proposal submitted pursuant to this Section 5.2(c)(iii) decrease due to further negotiations between Seller and a third party during the Contract Year, then Seller shall



resubmit such Seller's Proposal to Buyer.

(iv) If the Parties are implementing the procedures described in this Section 5.2(c) for multiple Segments and multiple Contract Years, then the results of Seller either accepting or rejecting Buyer's Offers or Buyer either accepting or rejecting Seller's Proposals shall first apply to the oldest Segment Tons and then each subsequent Segment Tons in that order.

Section 5.3 Legislation. In the event of the enactment, modification, or revision, to include a change in the interpretation or enforcement, of any federal, state, or local legislation, regulations, rules, or mandates issued pursuant thereto, including but not limited to the Federal Mine Safety & Health Act of 1977 and the Surface Mining Control and Reclamation Act of 1977, (a "Change in Law") on or after December 1, 2011, with respect to, by way of example, but not limited to, taxes; reclamation; conservation; mine safety; mine working conditions and practices; ventilation; health and health care; occupational hazards; reclamation, and conservation of mined areas; and which increases or decreases Seller's cost to mine coal from the McElroy Mine under this Agreement, an appropriate adjustment will be made to the Contract Price to reflect such changed cost; provided that such adjustment shall only apply to the Contract Price for those Tons to be delivered after the Change in Law and for which a Contract Price is established in the first paragraph of Section 5.1 of this Agreement. Additionally, such change in cost shall be determined by the difference in the new cost and the cost in effect on December 1, 2011.

In the event of a Change in Law (i) after the determination of any Segment Pricing and/or (ii) after determination of the Contract Price for a Contract Year pursuant to Section 5.2(b) of this Agreement, an appropriate adjustment will be made to either the Segment Pricing and/or the Contract Price, as applicable, to reflect such changed cost. Additionally, such change in cost shall be determined by the difference in the new cost and the cost in effect on the date the applicable negotiated price was determined.

In the event that any price adjustment exceeds the then current Contract Price more than two and one-half percent (2.5%) or should the cumulative total of all such adjustments under this Section 5.3 exceed \$2.70 per Ton, Buyer shall have the right, but not the obligation, to terminate this Contract. Should Buyer terminate this Contract as provided in the prior sentence, Seller may nullify such termination by giving written notice to Buyer within seven (7) calendar days after receiving Buyer's notice of such termination that Seller waives its rights to the amount of any increase above two and one-half percent (2.5%) of the then current Contract Price or that exceeds \$2.70 per Ton cumulatively.

#### ARTICLE VI

##### Taxes and Other Liabilities

Section 6.1. Third Party Impositions. Each Party shall use Commercially Reasonable Efforts to administer this Agreement and implement the provisions in accordance with the intent to minimize Taxes, but neither Party shall be obligated to incur additional expenses in doing so. Except as provided in Section 5.3, Seller shall be solely responsible as for all assessments, fees, costs, expenses, and taxes (including without limitation, New Taxes, but not income taxes) imposed by governmental authorities or other third parties ("Third Party Impositions") relating to the mining, beneficiation, production, loading and delivery of Coal to Buyer or in any way accrued or levied at or prior to the transfer of title to the Coal to Buyer, and including, without limitation, all severance taxes, royalties, black lung fees, reclamation fees and other

costs, charges, and liabilities. Buyer shall be solely responsible for Third Party Impositions relating to the Coal accrued or levied after the transfer of title to the Coal to Buyer.

If either Party is exempt from taxes, it shall provide a certificate of exemption or direct pay permit, or other reasonable satisfactory evidence of such exemption.

Section 6.2. Indemnity. Each Party shall indemnify, release, defend, and hold harmless the other Party, its officers, directors, Affiliates, agents, and employees, from and against any and all Third Party Impositions with respect to the Coal that are the responsibility of such Party.

#### ARTICLE VII

##### Adjustments to the Contract Price

Adjustments to the Contract Price for variances in quality shall be made in accordance with the provisions of Schedule 7.2 (attached hereto and hereby made a part of this Agreement). The Contract Price as adjusted by such provisions is referred to as the "Selling Price."

#### ARTICLE VIII

##### Weighing, Sampling, and Analyses

Weighing, sampling, and analyses shall be performed by Buyer in accordance with the provisions of Schedule 8.1 (attached hereto and hereby made a part of this Agreement).

#### ARTICLE IX

##### Other Governmental Legislation, Regulations, and Orders

Section 9.1. Buyer Compliance. Seller and Buyer shall make good faith efforts to comply with the provisions of all federal, state, and other governmental laws and any applicable orders and/or regulations, or any amendments or supplements thereto, which have been, or may at any time be, issued by a governmental agency.

Section 9.2. Government Impositions on Buyer. (a) If any federal, state, or other governmental law, regulation, or order (including but not limited to the Clean Air Act Amendments of 1990) (a "Government Imposition") is enforced or imposed upon Buyer (i) regarding the purchasing, burning, transporting, or the use of the Coal specified in this Agreement that would increase Buyer's cost of burning or using such Coal on a dollar per Ton basis equivalent to more than two and one-half percent (2.5%) of the then current Contract Price, (ii) reducing the emission limitations below the current standard, or addressing the sulfur or other chemical content of the Coal to be burned at any of the Plant(s); or if, as a result of any Government Imposition relating to the sulfur or other chemical content of the Coal and/or the stack emission limitations at a Plant(s), Buyer revises the specifications of the Coal to be burned at the Plant(s) and/or reduces the stack emission limitations at the Plant(s), in order that the Plant(s) may be in compliance with said Government Imposition; or if as a result of any of the foregoing, Buyer in its sole reasonable judgment decides to discontinue the use of Coal at the affected Plant(s), then Buyer may terminate deliveries of Coal to such Plant(s) by written notice to Seller as of the date determined pursuant

to Section 9.4. If Buyer so requests, Seller may, but is not obligated to, agree to deliver Coal having such different specifications and/or quantity requirements in accordance with the remainder of the terms and conditions of this Agreement (specifically at the price provisions set forth in Article V); provided, however, that those provisions dealing with quantity and/or quality will be changed appropriately to accommodate such different specifications and/or quantities. If, within thirty (30) days of Seller's receipt of Buyer's notice to Seller pursuant to this Section 9.2, Seller has not agreed to continue deliveries as provided above, Buyer may terminate deliveries of Coal to such Plant(s) by written notice to Seller. Should Buyer make such termination election, deliveries to such Plant(s) shall terminate as of the date determined pursuant to Section 9.4.

(b) If any Government Imposition reduces or eliminates the rights of Buyer to sell electric power to a location or locations served by the Plants, then Buyer may permanently reduce deliveries under this Agreement at any time thereafter by written notice to Seller setting forth the date upon which Buyer's election shall become effective; provided, however, that said effective date shall in no event be earlier than sixty (60) days after the date of delivery of such notice. Such reduction in deliveries shall be allocated on a pro rata basis among this Agreement and all other coal purchase agreements for the Plants then in effect.

Section 9.3. Government Impositions on Seller. In the event of any Government Imposition which prohibits (or restricts so as effectively to prohibit) mining or processing, or shipping, as may be applicable, of the Coal specified in this Agreement, Seller may elect to be permanently relieved of its obligation upon the effective date of implementation (compliance date) of such law, regulation, or order to deliver the quantity of Coal to be delivered under this Agreement affected by such Government Imposition.

Section 9.4. Effective Date. (a) In the event Buyer elects to invoke Section 9.2 relative to changes to the Clean Air Act Amendments of 1990, or to any law, regulation, or order relating thereto, Buyer shall notify Seller in writing setting forth the date upon which Buyer's election shall become effective; provided, however, that said effective date shall in no event be earlier than sixty (60) days after the date of delivery of such notice.

(b) Except as provided for in Section 9.4(a), should either Buyer or Seller elect to invoke Section 9.2 or 9.3, respectively, the Party so invoking shall notify the other Party in writing, stating the grounds upon which such invocation is based. Said notice shall also state the date upon which the notifying Party's election shall become effective, which said date shall not be earlier than one hundred twenty (120) days prior to the effective date of the implementation (compliance date) of such law, regulation, or order giving rise to the election; provided, however, that notwithstanding anything to the contrary herein, said effective date shall in no event be earlier than 60 days after the date of delivery of notice.

Section 9.5. Effect. If Buyer elects to terminate deliveries under Section 9.2 above or Seller decreases or terminates deliveries under Section 9.3 above, then neither Party shall have, after the effective date of such termination, any further obligation for such terminated quantities of Coal under this Agreement; provided, however, that such termination shall not affect any rights or obligations of Buyer or Seller existing under this Agreement for Coal shipped or required to be shipped prior to the effective date of said termination.

**ARTICLE X**  
**Representations**

On the Effective Date, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of jurisdiction of its formation;
- (ii) it has or will obtain all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (iii) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any available defenses;
- (v) Buyer and Seller are each acting for their own account; each Party has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;
- (vi) it is not bankrupt and there are no Bankruptcy Proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt;
- (vii) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (viii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (ix) is a "forward contract merchant" and this Agreement is a "forward contract" within the meaning of the United States Bankruptcy Code;
- (x) it has entered into this Agreement in connection with the conduct of its business and, with respect to Seller, it has the capacity or ability to mine, and, with respect to Buyer, it has the capacity or ability to receive delivery of all Coal referred to in this Agreement;
- (xi) with respect to this Agreement, it is an "eligible contract participant" as defined in Section 1a(12) of the Commodity Exchange Act, as amended [7USC § 1a(12)];

- (xii) all applicable information that is furnished in writing by it or on behalf of it to the other Party pursuant to this Agreement (as described on Schedule 10, attached hereto and hereby made a part of this Agreement) is as of the date provided true, accurate and complete in every material respect. For purposes of this representation, financial information provided via posting on the Internet shall be deemed to be written information provided to the other Party;
- (xiii) no event or circumstance exists at any Approved Production Source (as provided under Schedule 3.1-B), that would constitute an event of Force Majeure under this Agreement.

Each Party represents that the individuals signing this Agreement on behalf of each of them has been duly authorized to do so. This Agreement will become a valid and binding contract only upon its execution by such persons authorized to bind both Parties.

#### ARTICLE XI

##### Audit

(a) Each Party (and its representatives) has the right, at its sole expense during normal working hours and upon reasonable advance notice, to examine the records of the other Party, but only to the extent reasonably necessary to administer this Agreement or to verify the accuracy of any statement (financial or otherwise), charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the requesting Party statements evidencing the quantities and qualities of Coal delivered or received at the Designated Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statements and the payments thereof will be promptly made and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made in writing, in reference hereto, prior to the lapse of two (2) years from the rendition thereof; and provided further, that for the purpose of such statement and payment objections, this Article XI will survive any termination of this Agreement.

(b) Any examination of documentation providing the basis for any offer pursuant to Section 5.2(c)(ii) or proposal pursuant to Section 5.2(c)(iii) shall be performed by an independent third party mutually agreed upon by Buyer and Seller who shall verify the calculations of Buyer's offer or Seller's proposal as provided in Section 5.2(c).

Buyer and Seller will provide access, at its own cost and expense and in a commercially reasonable manner, to its records (and with respect to audits of records relating to Section 5.2(c) to the independent third party) during normal working hours to the extent reasonably necessary to verify whether Buyer and Seller have complied with their obligations. Buyer and Seller will cooperate, at their own cost and expense and using Commercially Reasonable Efforts, with all reasonable requests for additional information, summaries, reports, interviews of employees and other information reasonably necessary

Buyer and Seller will use Commercially Reasonable Efforts to include provisions in their bids and requests for proposals that will permit the independent third party hired by the Party soliciting such bids or requesting such proposals the ability to review and analyze their records in sufficient detail to verify whether Buyer and Seller has complied with their obligations under Section 5.2(c). To the extent that Buyer or Seller is restricted by an obligation of confidentiality to a third party from fully disclosing its

records related to the matter at issue, Buyer and Seller will disclose such portions of its records or summaries thereof as may be disclosed without violating the applicable restrictions and will use Commercially Reasonable Efforts to obtain access to those records reasonably necessary for the independent third party for purposes of performing the examination set forth above.

Upon completion of its examination pursuant to Section 5.2(c), the independent third party will report in writing to both Parties the accuracy of Buyer's offers and Seller's proposals. The findings of the independent third party shall be final and binding between the Parties and shall not be subject to further challenge by the Parties.

The independent third party shall determine Buyer's and Seller's compliance with its obligations under Section 5.2(c), and the corresponding price(s), volume(s) and term(s) following such procedures, consistent with the provisions of this Section, as it deems appropriate to the circumstances. The Parties do not intend to impose any particular procedures upon the independent third party other than those set forth in this Section, it being the desire of the Parties that the examination be conducted as expeditiously and objectively as reasonably practicable. The independent third party shall have no liability to the Parties in connection with such services, and the Parties shall provide such indemnities against liability to the independent third party as it shall reasonably request, except liability for acts of bad faith, willful misconduct or negligence. The fees and disbursements of the independent third party attributable to such services shall be paid by Seller for its examination of Buyer's records, and Buyer shall be reimbursed for the fees and disbursements of such independent third party's examination of the records of Buyer's offers. The fees and disbursements of the independent third party attributable to such services shall be paid by Buyer for its examination of Seller's records, and Seller shall be reimbursed for the fees and disbursements of such independent third party's examination of the records of Seller's proposals. However, that if the independent third party determines that Buyer or Seller has engaged in grossly negligent or willful misconduct regarding its actions relative to its obligations under Section 5.2(c), then the cost of the independent third party shall be paid solely by Buyer or Seller, as the case may be.

## ARTICLE XII

### Force Majeure

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details, orally and confirmed promptly in writing, of the Force Majeure to the other Party as soon as practicable (but in no event later than ninety (90) days after the date that such event prevents the delivery and/or receipt of Coal), then the Claiming Party shall be excused from the performance of its obligations. During such ninety (90) day period, Seller shall make Commercially Reasonable Efforts to provide Buyer with an estimated delivery schedule. The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure. Failure to give such notice and furnish such information within the time specified shall be deemed a waiver of all rights under this Article for such period of time during which notice was not given. Buyer and Seller shall exercise reasonable efforts to mitigate or eliminate the conditions which have caused the Force Majeure condition, provided, however, nothing herein contained shall be construed as

requiring Seller or Buyer to accede to any demands of labor, or labor unions, or suppliers, or other parties which Seller or Buyer considers unacceptable. No suspension or reduction by reasons of Force Majeure shall invalidate the remainder of this Agreement but, on the removal of the cause, shipments shall resume at the specified rate. The Claiming Party claiming Force Majeure shall furnish the non-Claiming Party a monthly statement by the 15th day of the calendar month setting forth the amount of tonnage not shipped or to be reduced because of Force Majeure causes asserted during the preceding calendar month.

If an event of Force Majeure reduces deliveries pursuant to this Agreement by at least twenty-five percent (25%) for a continuous period of ninety (90) days, then at any time thereafter during the Force Majeure period, the Party not claiming Force Majeure shall have the option, upon three (3) days' prior written notice, to terminate the portion of the obligations of the Parties hereunder that were affected by the Force Majeure event.

In the event of a Force Majeure, delivery of the affected quantity of Coal shall not be made up except at the sole discretion of the non-Claiming Party. Such make up of Tons shall occur in accordance with a schedule mutually agreed to by Buyer and Seller. Following a Party's receipt of the non-Claiming Party's notice electing to make up the shortfall due to the Force Majeure event, then, subsequent to the Claiming Party's receipt of such notice and prior to the making up of all of the shortfall, (i) if the Claiming Party is Seller, then Seller agrees to not sell coal from the Approved Production Sources that is not at the time of Seller's receipt of such notice contractually committed to any third party without first offering such coal to Buyer as make up tonnage, and (ii) if the Claiming Party is Buyer, then Buyer agrees to not buy coal meeting the requirements of the applicable Plant that is not at the time of Buyer's receipt of such notice contractually committed from any third party without first offering such coal to Seller as make up tonnage.

If Buyer is the non-Claiming Party, then the Tons shall be made up at the Contract Price in effect at the time of Seller's claim of Force Majeure. If Seller is the non-Claiming Party, then the Tons shall be made up at the Contract Price in effect at the time of the make up.

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

### ARTICLE XIII

#### Warranties

In addition to all other warranties and representations made by Seller in this Agreement, and subject to Section 2.1, Seller represents and warrants that (i) Seller, its Affiliates or subsidiaries, shall by the Effective Date of this Agreement, own or control sufficient reserves of Coal as defined in Schedule 3.1-B to satisfy the quantity and quality provisions for this Agreement; (ii) Seller hereby certifies that it is in good faith compliance with the rules, practices, and standards issued by any and all governmental agency(ies) with respect to legislation, regulations, rules, or mandates which were in effect either by interim or final rules, or passed, adopted, or promulgated but to go into later effect, as of the time specified for the first delivery of Coal hereunder, including all laws and regulations regarding the mining and sale of Coal (notices and orders issued under the Federal Coal Mine Health and Safety Act and State and Federal Reclamation Acts excepted); and (iii) Seller has filed or will have filed in a timely manner all licenses, permits, certificates and other documents necessary for it to fulfill its obligations hereunder. Upon request from Buyer, Seller shall furnish to Buyer a statement indicating the amount of reserves that remain to fulfill the quantity and quality requirements of this Agreement.

Seller covenants that it will, and does hereby, dedicate to this Agreement such quantity of said Coal reserves as is required for the full performance of Seller's obligations hereunder and that Seller will not sell nor contract to sell to others Coal from said reserves in such quantity and quality as to jeopardize its ability to deliver the total quantity and quality of Coal called for by this Agreement. Nothing in this Article XIII shall be construed as preventing Seller from mining and selling Coal from said reserves to others provided the foregoing provisions with respect to said reserves are complied with.

EXCEPT AS SET FORTH IN ARTICLE III CONCERNING QUALITY, ARTICLE X, ARTICLE XV, AND IN THIS ARTICLE, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WHETHER AS TO MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER MATTER.

### ARTICLE XIV

#### Guaranty

In order to secure all payment obligations of Seller hereunder, Seller shall cause its Credit Support Provider, CONSOL Energy Inc., to execute and deliver to the Buyer a Guaranty Agreement which shall be substantially in the form attached hereto as Exhibit 2.

### ARTICLE XV

#### Title, Risk of Loss, and Indemnity

Title for Coal conforming to this Agreement shall pass to Buyer as follows:

- a) Title to and risk of loss (except as provided in Schedule 2.4) of the Coal will pass to Buyer as the loaded barges are pulled from the Designated Delivery Point, or
- b) Title to and risk of loss of the Coal will pass to Buyer as the Coal is delivered via conveyor belt FOB the Designated Delivery Point (for the Mitchell Tons), or



- c) Title to and risk of loss of the Coal reconsigned by Buyer to an Alternate Delivery Point pursuant to Section 2.2 will pass to Buyer upon the Coal being unloaded or transloaded at the Alternate Delivery Point.
- d) Title shall revert back to Seller immediately upon any Applicable Lot rejection by Buyer as provided in Section 2.5(a).

Seller warrants that it has title to the Coal and will deliver the Coal to Buyer free and clear of all liens, claims, and encumbrances arising prior to the transfer of title to Buyer. Seller and Buyer shall each indemnify, defend, and save harmless the other Party, its officers, directors, Affiliates, agents, and employees from and against any liabilities, expenses, losses, claim, damages, penalties, causes of action, or suits arising out of or in connection with its failure to comply with its obligations under this Agreement.

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

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

## ARTICLE XVI

### Netting and Set Off

If the Parties are required to pay any amount under this Agreement on the same day or in the same month, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the Party owed the difference between the amounts owed. Each Party reserves to itself all rights, setoffs, counterclaims, combination of accounts, liens and other remedies and defenses which such Party has or may be entitled to (whether by operation of law or otherwise).

## ARTICLE XVII

### Events of Default, Remedies and Limitation of Liabilities

*Section 17.1. Event of Default.* An event of default ("Event of Default") with respect to a Party (the "Defaulting Party") shall mean any of the following:

- 1) the failure of the Defaulting Party to pay when due any required payment and such failure is not remedied within three Business Days, after receipt of written notice thereof, provided the payment is not subject to a good faith dispute as described in Article IV;
- 2) an event described under paragraph (d) of Article II, Section 2.5, Rejection and Suspension, has occurred;
- 3) any material representation or warranty made by a Party herein shall prove to be untrue in any material respect when made;
- 4) the failure of the Defaulting Party to comply with its other respective covenants or obligations under this Agreement and such failure continues uncured for ten (10) Business Days after receipt of written notice thereof;
- 5) the Defaulting Party shall be subject to a Bankruptcy Proceeding;
- 6) (i) the expiration or termination of any Credit Support of such Party's obligations under this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each transaction to which such Credit Support relates without the written consent of the other Party; (ii) failure by the Party providing Credit Support to make, within ten (10) Business Days prior to the expiration or termination of any Credit Support, adequate arrangements for new and equivalent (or a renewal of existing) Credit Support to become effective immediately upon the expiration of the existing Credit Support without the written consent of the other Party; (iii) failure of a Party's Credit Support Provider, if any, to perform any covenant in its Guaranty; or (iv) such Credit Support Provider becomes subject to a Bankruptcy Proceeding.
- 7) the Defaulting Party fails to establish, maintain, extend, or increase Performance Assurance when required pursuant to this Agreement;
- 8) the occurrence of a Material Adverse Change with respect to the Defaulting Party; provided, such Material Adverse Change shall not be considered an Event of Default if the Defaulting Party, within two (2) Business Days after the date of notice, provides to the Non-Defaulting Party for so long as the Material Adverse Change is continuing, Performance Assurance with the Non-Defaulting Party.

Section 17.2. Remedies. Upon the occurrence and during the continuance of an Event of Default, the other Party (the "Non-Defaulting Party") may, in its sole discretion:

- 1) terminate the Parties' respective obligations under this Agreement by establishing, and notifying the Defaulting Party of, an early termination date (which shall be no earlier than the date of such notice nor later than twenty (20) days after the date of such notice) on which this Agreement shall terminate ("Early Termination Date"); and/or
- 2) withhold any payments due to the Defaulting Party until such Event of Default is cured;
- 3) suspend performance of its obligations under this Agreement until such Event of Default is cured;
- 4) exercise any other rights that are available to it at law or in equity.

If notice of an Early Termination Date is given under this Article, the Early Termination Date will occur on the designated date, whether or not the relevant Event(s) of Default is then continuing.

Section 17.3. Payment. Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay the Defaulting Party any amount under this Article XVII, until the Non-Defaulting Party receives confirmation satisfactory to it, in its reasonable discretion, that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Agreement (or otherwise) have been fully and finally performed.

## ARTICLE XVIII

### SUCCESSORS, ASSIGNS, AND ASSIGNMENT

This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns; but, except for assignment to an Affiliate, this Agreement may not be assigned by either Party without the prior written consent of the other, except that either Party may without the written consent of the other assign to any financing institution or institutions this Agreement or any monies due or to become due hereunder. No assignment under this Article XVIII or conveyance of any interest in this Agreement shall in any way relieve the assignor or the conveying party from liability for full performance under this Agreement, except that, notwithstanding the foregoing, either party may, without the written consent of the other party, assign or convey any and/or all of its interest in this Agreement to one or more of its Affiliates, and upon such assignment, assignor shall be released from any further obligations or liabilities under this Agreement that have been assumed by such assignee(s) and such assignee(s) shall be considered as the Buyer or Seller, as the case may be, for all purposes of this Agreement with respect to such assignment(s). Any such assignee shall assume and agree to be bound by the terms and conditions of this Agreement.

Notwithstanding the provisions of the preceding paragraph to the contrary, Buyer shall have the right to assign, in whole or in part, its rights and interests and delegate its obligations under this Agreement to a producer of Synfuel provided that, (a) the proposed assignee agrees in writing to be bound by and to assume the terms and conditions of this Agreement and any and all obligations of Buyer to Seller arising or accruing hereunder during the term of such assignment and (b) such producer of Synfuel or its guarantor or other credit support provider has, at the time of assignment, a credit rating equal to or better than Buyer. If the interest of Buyer in this Agreement shall be assumed, sold or transferred as hereinbefore provided, Buyer shall be released and discharged from only those obligations to Seller arising or accruing hereunder

during the term of the assignment, and Buyer shall not be released and discharged from and shall remain liable for any and all obligations to Seller arising or accruing hereunder prior to or after the period of such assumption, unless such obligations are expressly assumed in writing by the assignee. During the assigned term, Seller shall perform this Agreement with the assuming party as if such person had been named as Buyer under this Agreement during the assigned term, but any act, omission or breach of the assignee during the assigned term will not affect the rights or obligations of the parties during the unassigned term. Should such assignment occur, Seller also agrees upon the request of Buyer to enter into a new agreement with such Synfuel producer on substantially the same terms and conditions as provided in this Contract with respect to all or part of the Coal to be purchased hereunder.

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

#### ARTICLE XIX

##### Government Contractor Compliance Certificate

Unless exempted, the Parties shall comply with the equal employment opportunity clause in Section 202 of Executive Order 11246 and all applicable rules, regulations, and relevant orders pertaining to Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and Section 4212 of the Vietnam Era Readjustment Assistance Act of 1974, as amended. The Parties represent that they do not, and shall not for the term of the Agreement, provide or maintain for its employees facilities that are segregated on the basis of race, color, religion, sex or national origin. The Parties represent that they will not assign their employees to perform any work related to the Agreement at a location where facilities are segregated on the basis of race, color, religion, sex or national origin. The Parties agree that they will not enter into any agreement to obtain goods or services relating to the Agreement with any entity that provides, maintains or assigns its employees to work at locations where facilities are segregated on the basis of race, color, religion, sex or national origin. As used herein, "facility" means waiting rooms; work areas; restaurants and other eating areas; time clocks; locker rooms and other storage or sleeping areas, except as necessary to assure privacy between male and female employees; parking lots, drinking fountains; recreation or entertainment areas; and transportation. If not otherwise exempted by Title 48 and to the extent applicable, the Parties will comply with 48 CFR §52.219-8, Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns, and 48 CFR §52.219-9, Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan. If not otherwise exempted by 41 CFR §60-1.5, the Parties represents that it will file all reports or other required information specified in 41 CFR §60-1.7.

#### ARTICLE XX

##### Counterparts, Survival and Severability

This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument. All audit rights shall survive the termination of this Agreement in full for a period of two (2) years (except with respect to audit rights as to Third Party Impositions which shall survive for the applicable statute of limitations, including any extensions thereof).

Should any provision of this Agreement for any reason be declared invalid or unenforceable by final and applicable order of any court or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining portions, and the remaining portions shall remain in effect as if this Agreement had been executed without the invalid portion. In the event any provision of this Agreement is declared invalid, the Parties shall promptly renegotiate to restore this Agreement as near as possible to its original intent and effect.

#### ARTICLE XXI

##### Non-Waiver and Duty to Mitigate

No waiver by any Party of any of its rights with respect to any other Party or with respect to any matter or default arising in connection with this Agreement shall be construed as a waiver of any subsequent right, matter or default whether of a like, kind, or different nature. Any waiver shall be in writing signed by the waiving Party.

Each Party agrees that it has a duty to mitigate damages.

Except as otherwise set forth in this Agreement, nothing contained in this Agreement shall be construed or constitute any Party as the employee, agent, partner, joint venturer or contractor of any other Party.

This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement.

#### ARTICLE XXII

##### Addresses for Notices, Invoices and Wire Transfers

Notices required under this Agreement may be exercised verbally, but shall be provided to the other Party in writing as soon as practicable to the addresses shown herein. The Parties shall be legally bound from the date the notification is exercised.

Unless expressly provided otherwise, notices shall be in writing and delivered by hand or electronic means or transmitted by facsimile or sent by postage prepaid, certified mail, return receipt requested, or by overnight mail or courier. Notices hand delivered or delivered by electronic means shall be deemed delivered by the close of the Business Day on which it was hand delivered or delivered by electronic means (unless hand delivered after close of the Business Day in which case it shall be deemed received by the close of the next Business Day). Notices provided by facsimile shall be deemed to have been received upon the sending Party's receipt of its facsimile machine's confirmation of a successful transmission. If the day on which such facsimile is received is not a Business Day or is after five p.m. Eastern Prevailing Time on a Business Day, then such facsimile shall be deemed to have been received on the following Business Day. Notices provided by postage prepaid, certified mail, return receipt requested, or by overnight mail or courier, shall be deemed delivered upon mailing. A Party may change its address by providing notice thereof in accordance with this Article XXII.

For Notices to Seller:

ATTN: DIRECTOR OF COAL SALES ADMINISTRATION  
OHIO VALLEY RESOURCES, INC.  
46226 NATIONAL RD.  
ST. CLAIRSVILLE, OH 43950  
E-MAIL: MECCOALSALLES@COALSOURCE.COM  
PHONE: (740) 338-3397

WITH A COPY TO:

ATTN: GENERAL COUNSEL  
OHIO VALLEY RESOURCES, INC.  
46226 NATIONAL RD.  
ST. CLAIRSVILLE, OH 43950  
E-MAIL: LEGAL@COALSOURCE.COM  
PHONE: (740) 338-3100

FOR NOTICES TO SELLER OF A ROUTINE NATURE AND FOR NOTICES BY TELEPHONE:

ATTN: DIRECTOR OF COAL SALES ADMINISTRATION  
OHIO VALLEY RESOURCES, INC.  
46226 NATIONAL RD.  
ST. CLAIRSVILLE, OH 43950  
E-MAIL: MECCOALSALLES@COALSOURCE.COM  
PHONE: (740) 338-3397

If to Buyer:

ATTN: FUEL CONTRACT ADMINISTRATION  
AMERICAN ELECTRIC POWER SERVICE CORPORATION  
155 WEST NATIONWIDE BOULEVARD, SUITE 500  
COLUMBUS, OH 43215  
PHONE: 614-583-6100      FAX: 614-583-1627

Seller shall reference this Agreement number on each invoice.

ARTICLE XXIII  
Confidentiality

Neither Party shall disclose, either directly or indirectly, the terms of this Agreement to a third party without the written consent of the other Party (other than a Party's and its Affiliates' employees, lenders, counsel, accountants or prospective permitted purchasers), except in order to comply with any applicable law, order, regulation or exchange rule; provided, each Party shall notify the other Party of any proceeding of which it is aware which may result in disclosure and use reasonable efforts to prevent or limit the disclosure.

#### ARTICLE XXIV

##### Entire Agreement, Amendments, and Interpretation

This Agreement and the Schedules attached hereto and made a part hereof constitute the entire agreement between the Parties relating to the subject matter contemplated by this Agreement and supersedes any prior or contemporaneous agreements or representations affecting the same subject matter. The Parties agree that parol or extrinsic evidence may not be used to vary or contradict the express terms of this Agreement.

No amendment modification or change to this Agreement be enforceable unless reduced to a writing executed by the Party against whom such amendment, modification or change is sought to be enforced and shall reference this Agreement.

The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be used in interpretation of this Agreement.

All headings for Articles and Sections herein are for convenience and reference purposes only. Any capitalized terms used herein and not defined in the article or section in which it appears shall have the meaning set forth herein under Definitions.

#### ARTICLE XXV

##### Governing Law; Waiver of Jury Trial

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. Except as otherwise provided for herein, the provisions of the UCC as adopted by the State of New York shall govern this Agreement shall be deemed to apply to this Agreement and any Coal supplied hereunder shall be deemed to be "goods" for purposes of the UCC.

#### ARTICLE XXVI

##### Venue

Each Party hereby submits to the exclusive jurisdiction of state or federal courts located in New York City, New York and all appellate courts therefrom and waives any objection which it may have at any time to the laying of venue of any proceedings brought in such court, waives any claim that such proceedings have been brought in an inconvenient forum, and further waives the right to object, with respect to such proceedings, that such court does not have jurisdiction over such Party.

#### ARTICLE XXVII

##### Imaged Agreement

Any original executed Agreement or other related document may be photocopied and stored on computer tapes and disks ("Imaged Agreement"). If an Imaged Agreement is introduced as evidence in any judicial, arbitration, mediation or administrative proceedings, it shall be considered as admissible

evidence. Neither Party shall object to the admissibility of the Imaged Document on the basis that such were not originated or maintained in documentary form under either the hearsay rule, the best evidence rule, or other rule of evidence.

ARTICLE XXVIII

Consequential Damages

In no event shall either Party be liable to the other for incidental, punitive, special, or consequential damages, including, but not limited to, lost profits, lost use or business interruption damages, arising out of any breach of warranty or default in the performance of any of its covenants or obligations hereunder in excess of \$5,000,000 per occurrence and \$20,000,000 in the aggregate over the Term of this Agreement.

*[End of document, signature page follows.]*



IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be executed in its behalf by its proper officer thereunder duly authorized, all as of the day and year first above written.

**Sellers:**

CONSOLIDATION COAL COMPANY      and      MCELROY COAL COMPANY

By: *Robert A. Pusatore*  
Its: *President*

CONSOL Energy Sales Company  
Attorney In Fact

By: *Robert A. Pusatore*  
Its: *President*

CONSOL Energy Sales Company  
Attorney In Fact

**Buyer:**

OHIO POWER COMPANY

By: *Charles E. Zebula* *DM*  
Its: VICE PRESIDENT *Jed*

**SCHEDULE 2.4**  
**TRANSPORTATION SPECIFICATIONS**  
**BARGE**

Seller shall load Coal that is to be delivered hereunder into seaworthy barges, reasonably clean and ready to be loaded, provided by Buyer, or its agent, at the Designated Delivery Point(s) listed on Schedule 3.1-B of this Agreement. Seller shall not be obligated to load any barge that is not in such condition. Such barge shipments shall be tendered by Seller loaded to each barge's normal draft capacity as directed by Buyer or its agent and as permitted by prevailing river conditions.

Between the time the barges are delivered to and the time the barges are picked up from a Designated Delivery Point(s), the loading, fleeting, and switching of barges shall be at Seller's risk. All charges for barge drop-off, loading, switching, fleeting, and pickup, other than those services provided by Buyer and/or its agent, shall be at Seller's expense.

Seller shall not move, nor permit the movement of, any barge(s) provided by Buyer, or its agent, to any other location once the barge(s) are delivered at the Designated Delivery Point(s), unless otherwise agreed to by Buyer. Any such movement of barges requested by Seller shall be subject to Buyer's approval. If approved, such movement shall be rearranged and directed by Buyer at Seller's expense.

Barge placement requests are to be made by Seller under this Agreement so as to provide for approximately equal weekly shipments in fulfillment of Seller's monthly quantity obligation. In the event that a Designated Delivery Point(s) is utilized by more than one supplier of Coal to Buyer, Buyer shall arrange for the allocation and placement of barges on a weekly basis in response to the Seller's reasonable requests. Any request for an alteration to such allocation or placement shall be made to and, if approved, directed by Buyer.

Seller shall not have the right to ship Coal to be delivered under this Agreement from any shipping origin other than the Designated Delivery Point(s) unless Seller shall first have obtained Buyer's written approval of such proposed shipping origin. Such written approval shall be at Buyer's sole discretion, but shall be conditioned upon Seller's agreement to pay any increased barging cost differential that would be incurred by Buyer (any decreased barging cost differential shall be entirely to Buyer's benefit) for shipments made from the proposed shipping origin as compared to the Shoemaker Dock or the Ireland Dock, as applicable.

It shall be Seller's obligation to provide and maintain adequate dock and harbor facilities at the Designated Delivery Point(s), to load barges in accord with Buyer's or its agent's request, and to dispatch and otherwise comply with reasonable requirements of Buyer's or its agent's barging and operating schedule.

Seller shall be responsible for all loss of, or damage to, any barge provided hereunder and for the loss of any Coal in said barge (other than damage or loss due to normal wear and tear, latent or patent

defects in the barge existing at the time of delivery) occurring after such barge has been delivered to Seller at the Designated Delivery Point(s) and while in the custody, control, and possession of Seller. Seller shall reimburse Buyer for the cost to Buyer of repairing or replacing any such barge in an amount not to exceed its replacement value at the time of its loss or damage. Said replacement value shall be defined as the remaining years of life of said barge, divided by the expected life of said barge when new, and multiplied by the current market value of a new barge having similar design and capacity at the time of loss or damage.

A barge shall be deemed to have been delivered to Seller and be in Seller's custody, control, and possession, when it has been secured by or on behalf of Buyer or its agent at an Designated Delivery Point(s) to await loading and shall be deemed to be picked up when untied for pick up by or on behalf of Buyer from such Designated Delivery Point(s). Seller shall have the right, but not the duty, to refuse to load any barges which Seller considers unseaworthy. In such event, Seller shall promptly notify Buyer.

Actual loading days for a barge shall commence concurrently with the commencement of the Free Loading Days and shall continue until the barge has been loaded and Buyer has been advised that the barge is loaded and available at the Designated Delivery Point(s) for pickup by Buyer or its agent.

Seller shall maintain a demurrage account in which debits and credits for the loading of barges from Buyer's affiliate barge company shall be recorded. One credit for each barge delivered to be loaded with Coal shall be recorded in the demurrage account for each whole loading day for which the actual loading time for the barge is less than the Free Loading Days for the barge as set forth above, and one debit for each barge delivered to be loaded with Coal shall be recorded in the demurrage account for each whole loading day, or part of a loading day, for which the actual loading time for the barge is greater than the Free Loading Days provided above for the barge, and for each demurrage day accrued for each barge that has the Coal it contains rejected by Buyer as hereinafter provided.

Seller recognizes that Buyer may be assessed a penalty by a third-party barge company for demurrage in the event that Seller fails to load each barge within the loading time set forth in Buyer's barging agreement. If Seller fails to comply with the foregoing barge loading time limit, Seller shall pay to Buyer the penalty charges assessed by the third-party barge company. The charges will be those actually paid to the third-party barge company in effect when such charges were incurred. Should Seller not originate shipments in accordance with this Schedule 2.4 A, Seller shall pay Buyer for any resulting charges incurred by Buyer which are assessed by the third-party barge line in excess of the charges that would have been incurred by Buyer had Seller strictly complied herewith.

At the end of each calendar quarter throughout the term of this Agreement, the demurrage account shall be balanced and settled as follows: Credits in the demurrage account shall be used to cancel debits in the demurrage account with one credit canceling one debit. Seller shall pay to Buyer the daily barge demurrage rate of \$300.00 (which amount shall be adjusted in an amount proportional to the adjustments to the Base Price under Article VI hereof), for each debit in a demurrage account not so cancelled. There shall not be payment for credits in the demurrage account. Excess credits in a

demurrage account accumulated during each calendar quarter which remain unused following the balancing and settlement of the demurrage account shall be cancelled. The daily demurrage rate shall be adjusted in an amount proportional to the increases in the Contract Price [if any], i.e. if the Contract Price between the first year and the third year of this Agreement increases by 10%, then the daily barge demurrage rate shall be 10% higher in the third year than in the first year of this Agreement.

Should Buyer reject any bargeload shipment of Coal because the Coal in such barge does not conform to the requirements set forth in this Agreement hereof, then Seller shall pay all transportation costs associated with said shipment, including a daily barge demurrage rate of \$300.00 for each such barge (which amount shall be adjusted in an amount proportional to the adjustments to the Contract Price under Article V hereof) and all other costs incurred by Buyer with respect to said barge(s) until the barge(s) are unloaded and transported to a destination specified by Buyer for further utilization. Such daily barge usage rate shall be charged for each day or part of a day effective as of the first 7:00 a.m., following Buyer's rejection and continuing through the date such barge reaches the destination specified by Buyer.

**SCHEDULE 3.1-A  
 QUALITY SPECIFICATIONS**

The Coal required and delivered hereunder, upon unloading and receipt at the Plant shall meet the following "Contracted Half-Month" specifications. Further, for the purposes of Section 2.5, the following "Suspension" specifications shall be applicable to such Coal.

**Specification A:  
 McElroy Mine Coal  
 Weighted Average "As Received" Basis**

|                                     | Contracted     |             | Suspension     |             |                        |             |
|-------------------------------------|----------------|-------------|----------------|-------------|------------------------|-------------|
|                                     | Half Month (A) |             | Half Month (A) |             | Applicable Lot (B) (D) |             |
|                                     | Non-Mitchell   | Mitchell(F) | Non-Mitchell   | Mitchell(F) | Non-Mitchell           | Mitchell(F) |
| Calorific Value (Btu/lb) min        | 12,400         | 12,650(H)   | 12,300         | 12,550(H)   | 12,150                 | 12,450      |
| Moisture (%) max                    | 7.00           | 6.50        | 7.50           | 7.25        | 8.00                   | 7.50        |
| Ash (%) max                         | 10.50          | 9.50(G)     | 11.50          | 10.00(G)    | 12.50                  | 10.50       |
| Volatile Matter (%) min             | 37.00          | 37.50       | 36.00          | 36.90       | 36.50                  | 36.00       |
| Hardgrove Grindability min          | 53             | 53          | 52             | 52          | 51                     | 51          |
| Lbs SO <sub>2</sub> /MM Btu max (C) | (E)            | (E)         | (I)            | (I)         | (I)                    | (I)         |
| Ash Fusion (H=½ W)                  | 2,050          | 2,100       | 2,000          | 2,030       | 1,975                  | 2,000       |
| °F Red Atm min                      |                |             |                |             |                        |             |

| (I) | Contract Year | Suspension <sup>1</sup> |             |                        |             |
|-----|---------------|-------------------------|-------------|------------------------|-------------|
|     |               | Half Month (A)          |             | Applicable Lot (B) (D) |             |
|     |               | Non-Mitchell            | Mitchell(F) | Non-Mitchell           | Mitchell(F) |
|     | 2013          | 6.90                    | 6.81        | 7.25                   | 7.25        |
|     | 2014          | 7.10                    | 7.10        | 7.50                   | 7.45        |
|     | 2015          | 7.70                    | 7.70        | 8.10                   | 8.00        |
|     | 2016          | 7.50                    | 7.50        | 7.85                   | 7.75        |
|     | 2017-2021     | 6.90                    | 6.81        | 7.25                   | 7.25        |

<sup>1</sup> Notwithstanding the foregoing, Buyer shall have the right to suspend Seller if, during any half-month period, the combined weighted average lbs. SO<sub>2</sub>/MMBtu of McElroy/Non-Mitchell and Shoemaker specification coal, that is delivered, is greater than 7.41 lbs. SO<sub>2</sub>/MMBtu.

**\* Definitions:**

(A) = The Half-Month weighted average analysis result (as determined under Article VIII of this Agreement).

(B) = The analysis result of a sample representing, as applicable, either (a) a minimum of three (3) barges in a single tow picked up by Buyer, or its agent, at a Designated Delivery Point; (b) a minimum of three (3) consecutive barges unloaded by Buyer in a single day; (c) the aggregate of the Coal delivered by conveyor belt at the Designated Delivery Point during any period in which a sample has been collected and analyzed pursuant to Schedule 8.1, subparagraph (2)(c); or (d) the aggregate of the Coal delivered by truck to the Designated Delivery Point on any one day.

A daily unloading shall consist of a minimum of three (3) unloaded barges. Should three (3) barges not be unloaded, such barge(s) shall be added to the next day unloadings until a minimum of three (3) barges are unloaded.

(C) = For the purpose of determining the pounds of sulfur dioxide per million Btu and pounds Ash per million Btu, the figures shall be rounded to the nearest one hundredth. For example, 6.004 pounds SO<sub>2</sub> per million Btu shall mean 6.00 pounds SO<sub>2</sub> per million Btu, while 6.005 pounds SO<sub>2</sub> per million Btu shall mean 6.01

pounds SO<sub>2</sub> per million Btu and shall be deemed, for example, not to have met a 6.00 pounds SO<sub>2</sub> per million Btu specification.

(D) = Buyer shall also have the right to reject any Coal that is not 2 x 0, that exceeds a maximum of 60% passing a one quarter inch (1/4") square wire cloth sieve, is not free flowing and substantially free of extraneous material upon unloading, and has intermediate sizes (including fines) added or removed.

(E) = The SO<sub>2</sub> Specification shall be as follows:

**Weighted Average "As Received" Basis**

|                          | <u>Contracted Half-Year<br/>SO<sub>2</sub> Specification</u> |                 |
|--------------------------|--|-----------------|
| <b>Specification A:</b>  | <u>Non-Mitchell</u>  | <u>Mitchell</u> |
| <u>McElroy Mine Coal</u> |  |                 |
| 2014                     | 6.76   | 6.69            |
| 2015                     | 7.21   | 7.11            |
| 2016                     | 7.15   | 7.05            |

(F) = A maximum of 4,000,000 Tons per Contract Year will be delivered to the Mitchell Plant.

(G) = The Ash Half-Month Suspension specification shown under Specification A is for Contract Years 2009 and all remaining Contract Years. The Ash Half-Month Suspension specification shall be 10.25% for Contract Years 2007 and 2008.

(H) = The Calorific Value Half-Month Suspension specification shown under Specification A is for Contract Years 2009 and all remaining Contract Years. The Calorific Value Half-Month Suspension specification shall be 12,500 for Contract Years 2007 and 2008.

**SCHEDULE 3.1-B**  
**APPROVED PRODUCTION SOURCE(S), APPROVED RESERVE(S) OF COAL,**  
**AND DESIGNATED DELIVERY POINT(S)**

The Approved Production Source(s) to which reference is made to in this Agreement consist of the following:

- 1) McElroy Mine (as depicted on the map attached hereto and hereby made a part hereof) consisting of deep mines, extracting the reserves consisting of the Pittsburgh No. 8 seam of coal in Marshall County, West Virginia.
- 2) Shoemaker Mine (as depicted on the map attached hereto and hereby made a part hereof) consisting of a deep mine, extracting the reserves consisting of the Pittsburgh No. 8 seam of coal in Marshall County, West Virginia.

The Approved Reserve(s) of coal to which reference is made in this Agreement consist of the following:

- 1) The Shoemaker and McElroy Mine Reserves, (as depicted on the map attached hereto and hereby made a part hereof) the reserves consisting of the Pittsburgh No. 8 seam of coal in Marshall County, West Virginia.

The Designated Delivery Point(s) to which reference is made in this Agreement are:

**BARGE LOADING FACILITY:**

| <u>NAME</u>    | <u>MILEPOST NO.</u> | <u>LOCATION</u> |
|----------------|---------------------|-----------------|
| Shoemaker Dock | 93.7                | Ohio River      |
| Ireland Dock   | 110.4               | Ohio River      |





**SCHEDULE 5.2(c)(ii)**

**CALCULATION OF EQUIVALENT OFFER PRICE**

Calculation of McElroy/Non-Mitchell Price Based on Third Party Offer(s)

|   |     |          |
|---|-----|----------|
| Third Party Offer Price \$/Ton                          |     | \$ XX.XX |
| Plus: Transportation of Third Party tons to Gavin Plant |     | X.XX     |
| Total Delivered \$/Ton                                  |     | \$ XX.XX |
|   |     |          |
| Total Delivered C/MMBtu                                 | (1) | XXX.XX   |
| Plus: Cost to Scrub Third Party Coal (C/MMBtu)          | (2) | XX.XX    |
| Plus: Cost of Third Party Allowances (C/MMBtu)          | (3) | XX.XX    |
| Total Quality Adj Delivered C/MMBtu                     |     | XXX.XX   |
|   |     |          |
|   |     | XXX.XX   |
| Less: Cost to Scrub McElroy Coal (C/MMBtu)              | (4) | XX.XX    |
| Less: McElroy Allowance Cost (C/MMBtu)                  | (5) | XX.XX    |
| Total McElroy Delivered C/MMBtu                         |     | XXX.XX   |
|   |     |          |
| Total McElroy Delivered \$/Ton                          | (6) | \$ XX.XX |
| Less: McElroy Transportation to Gavin Plant             |     | XX.XX    |
| McElroy/Non-Mitchell FOB Mine Equivalent Offer Price    |     | \$ XX.XX |

(1) Calculated by \$ per ton ÷ Third Party Proposed Btu's per pound ÷ 0.00002

(2) Third Party Scrubber Cost =

$$\frac{\text{Actual Scrubbing Cost}^*}{20} \times (\text{Third Party Proposed SO}_2 \times 0.95^{**})$$

(3) Third Party Allowance Cost =

$$\frac{\text{SO}_2 \text{ Allowance Value}^{***}}{20} \times (\text{Third Party Proposed SO}_2 \times 0.05^{****})$$

(4) McElroy Scrubber Cost =

$$\frac{\text{Actual Scrubbing Cost}^*}{20} \times (\text{McElroy SO}_2 \text{ as provided by Seller} \times 0.95^{**})$$

(5) McElroy Allowance Cost =

$$\frac{\text{SO}_2 \text{ Allowance Value}^{***}}{20} \times (\text{McElroy SO}_2 \text{ as provided by Seller} \times 0.05^{****})$$

(6) McElroy C/MMBtu x 12,400 Btu's per pound x 0.00002

- \* Based on Gavin Plant's 12 mo. average actual scrubbing cost for the year prior to the negotiations, determined by adding the average actual scrubbing cost for each month during such year and dividing by 12. Attached as an Exhibit to this Schedule 5.2(c)(ii) is an example of the current methodology and types of costs Buyer currently utilizes in determining such actual scrubbing cost.
- \*\* Equal to the Gavin Plant's designed scrubber efficiency (fixed at 95%)
- \*\*\* Equal to the average price of SO<sub>2</sub> allowances for the immediately preceding calendar month of the offer, expressed in dollars per ton of SO<sub>2</sub> in the table entitled "SO<sub>2</sub> Allowances" under the caption "Assessment Averages" published (or if not published, the average of the SO<sub>2</sub> Daily Prices for the immediately preceding calendar month of delivery) in Argus Air Daily, or its successor publication, as published on the first Monday following such month
- \*\*\*\* Equal to 1 minus the Gavin Plant's designed scrubber efficiency

### Current Example of Buyer's Scrubbing Costs

Cost of scrubbing (\$/ton of SO<sub>2</sub> removed) at Gavin Units 1&2 considering lime, polymer, landfill, maintenance, labor & aux power.

| Year | 1<br>SO <sub>2</sub><br>Rem. Eff.<br>% | 2<br>SO <sub>2</sub><br>Removed<br>tons | 3<br>Total Lime<br>Usage<br>Tons | 4<br><u>Lb Lime</u><br>lb SO <sub>2</sub> | 5<br>Total Lime Oper.<br>Cost<br>1000\$ | 6<br>Landfill Maint.<br>Cost<br>1000\$ | 7<br>Labor &<br>Supervision<br>Cost<br>1000\$ | 8<br>Landfill Maint.<br>Cost<br>1000\$ | 9<br>Labor &<br>Supervision<br>Cost<br>1000\$ | 10<br>Aux. Power<br>Cost<br>1000\$ | 11<br>Total<br>Cost<br>1000\$ | 12<br>Total Scrubbing<br>Cost<br>\$/ton SO <sub>2</sub> Rem. |
|------|--|---|----------------------------------|---|---|--|---|--|---|------------------------------------|-------------------------------|--|
| 1997 | 92.0                                   | 386797                                  | 503142                           | 1.30                                      | 23300                                   | 822                                    | 4140  | 7470                                   | 3443  | 6293                               | 45469                         | 117.6  |
| 1998 | 92.6                                   | 422881                                  | 520748                           | 1.23                                      | 24134                                   | 1200                                   | 4000  | 2515                                   | 4272  | 4663                               | 40783                         | 96.4   |
| 1999 | 96.5                                   | 421674                                  | 482289                           | 1.14                                      | 22414                                   | 1220                                   | 3850  | 2296                                   | 3133  | 4099                               | 37012                         | 87.8   |
| 2000 | 95.5                                   | 531879                                  | 508729                           | 0.96                                      | 23780                                   | 1370                                   | 4208  | 1979                                   | 4444  | 5170                               | 40951                         | 77.0   |
| 2001 | 91.8                                   | 525779                                  | 487667                           | 0.93                                      | 22984                                   | 1674                                   | 4429  | 2498                                   | 4430  | 5011                               | 41026                         | 78   |
| 2002 | 92                                     | 367622                                  | 421542                           | 1.15                                      | 22282                                   | 1919                                   | 4266  | 2339                                   | 3532  | 4609                               | 38947                         | 105.9**  |
| 2003 | 93.6                                   | 526913                                  | 524317                           | 0.99                                      | 27328                                   | 2997                                   | 4144  | 2496                                   | 3758  | 5010                               | 45733                         | 86.8   |
| 2004 | 93.6                                   | 382011                                  | 412072                           | 1.08                                      | 19917                                   | 2458                                   | 2319  | 2387                                   | 2595  | 3885                               | 33561                         | 87.9   |
| 2005 | 95.1*                                  | 129469                                  | 157605                           | 1.22                                      |   |  |   |  |   |                                    |                               |  |

\* 2005 values are for 1st quarter.

\*\* Lime raised in price from \$47.13 to \$52.30/ton.

Columns 1 & 2 are taken from Plant CEMS data. Removal efficiency is a weighted average efficiency for the two units.

Columns 3 & 5 were supplied by Plant personnel.

Column 4 is a calculated ratio of the amount of lime used per ton of SO<sub>2</sub> removed.

Column 6 is the total cost of polymer used in that year and other operating costs as reported by Plant personnel.

Column 7 is taken from a measured tons of FGD produced, times the contract load, haul & place figures.

Columns 8 and 9 are from EIA-767 report for that year (Steam Electric Plant Operation and Design Report), or from Plant personnel.

Column 10 is taken from the aux. power transformers for each unit as reported by Plant personnel; x \$10/MWhr.

Column 11 is a summation of columns 5 to 10.

Column 12 is a calculated ratio of column 11 and column 2.

|                              |       |       |       |       |       |       |
|------------------------------|-------|-------|-------|-------|-------|-------|
| Cost of lime (\$/ton)        | 1997  | 1998  | 1999  | 2000  | 2001  | 2002  |
|                              | 46.31 | 46.34 | 46.47 | 46.74 | 47.13 | 52.30 |
| \$ lime/ ton SO <sub>2</sub> |       |       |       |       |       |       |
| (\$ lime x line 4)           | 60.24 | 57    | 52.98 | 44.87 | 43.83 | 55.64 |

**SCHEDULE 7.2  
 QUALITY ADJUSTMENTS**

In order for the Selling Price to accommodate variations in calorific value, sulfur dioxide value, and ash value of the Coal delivered hereunder, there shall be an amount(s) added to or subtracted from the Contract Prices as provided for in this Article. These price adjustments shall be in addition to any rights that Buyer may have as provided or referenced under Article II of this Agreement. Additionally, if Buyer modifies its methodology for evaluating coal (such as Buyer determining a need to change the evaluation method for sulfur dioxide or ash or to evaluate additional Coal characteristics (e.g., mercury, arsenic, etc.)), Buyer may request that a new methodology for calculating quality adjustments on such Coal characteristics be incorporated into this Agreement. If, upon evaluation of Buyer's request, Seller reasonably determines that it cannot comply with such new methodology for calculating quality adjustments on such Coal characteristics, then, within thirty (30) days following Seller's receipt of Buyer's request, Seller shall notify Buyer of Seller's inability to comply with Buyer's request. Buyer or Seller may then elect to terminate this Agreement by providing written notice to the non-terminating Party within seven (7) calendar days following Buyer's request. If Seller is the non-terminating Party, then Seller may nullify Buyer's termination by providing written notice to Buyer within seven (7) calendar days following its receipt of Buyer's notice that Seller will comply with Buyer's request. If Buyer is the non-terminating Party, then Buyer may nullify Seller's termination by providing written notice to Seller within seven (7) calendar days following its receipt of Seller's notice that Seller will not be required to comply with Buyer's request.

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

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

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

(b) Within thirty (30) days following each Contract Half-Year an adjustment in the price per Ton for the actual SO<sub>2</sub> received shall be compared to the applicable Contract SO<sub>2</sub> specification, and any difference, positive or negative, shall be calculated based upon the relevant SO<sub>2</sub> removal costs at the Plant, including, but not limited to, the cost of Emission Allowances for applicable percentage of SO<sub>2</sub> not removed, as follows:

$$\left[ \frac{\text{CS}_{20} (\text{Contracted Half-Year SO}_2 \text{ Specification})}{\text{"As Received" Actual lbs. SO}_2^*} \times \text{"As-Received" Actual Btu's/lb.}^* \times (\text{PSE}) \right]$$

$$\text{SO}_2 \text{ Adjustment (Dollars per Ton) } = \frac{50 \times 10^3 + \left[ \frac{E}{20} \left( \frac{\text{Contracted Half-Year SO}_2 \text{ Specification}}{\text{"As Received" Actual lbs. SO}_2^*} \times \frac{\text{"As Received" Actual Btu's/lb.}^* \times (1 - \text{PSE}) \right)}{50 \times 10^3} \right]}{50 \times 10^3}$$

Where:

CS = the average cost to Buyer to remove one ton of SO<sub>2</sub> from each applicable Plant's emissions for the prior Contract Year.

PSE = the average "actual" scrubber efficiency percentage for each applicable Plant for the prior Contract Year.

E = the average price of SO<sub>2</sub> allowances for the six calendar months of delivery within the applicable Contract Half-Year, expressed in the average dollars per ton of SO<sub>2</sub> in the table entitled "SO<sub>2</sub> Allowances" under the caption "Assessment Averages" published in Argus Air Daily, or its successor publication, as published on the first Monday following such month for the six calendar months within the applicable Contract Half-Year (or if not published, the average of the SO<sub>2</sub> Daily Prices for the applicable Contract Half-Year).

\* = refers to the Half-Year weighted average "As Received" Btu and lbs. SO<sub>2</sub>/mmBtu.

However, for each source (i.e. McElroy/Non-Mitchell and McElroy/Mitchell) the maximum Contract Half-Year SO<sub>2</sub> premium shall not exceed the premium that would be payable for Coal containing 1.0 lb SO<sub>2</sub> per mmbtu less than the applicable Contracted Half-Year SO<sub>2</sub> Specification.

An amount of three dollars (\$3.000) per Ton shall be deducted from the Contract Price for each Applicable Lot of Coal having an SO<sub>2</sub> value greater than 7.25lbs. SO<sub>2</sub>/MMBtu.

(c) For each Applicable Lot of Coal tested to have an ash content greater than the Applicable Lot Suspension Limit, the Contract Price for Coal in such Applicable Lot will be decreased by \$0.30 for each 1.0% ash increment, or portion thereof, by which the Applicable Lot's ash content is tested to be above the Applicable Lot Suspension Limit. (For example, if the Ash Applicable Lot Suspension Limit is 13.00% and an Applicable Lot has a percent ash value of 13.70%, then the Contract Price decrease shall be \$0.30 per Ton.)

**SCHEDULE 8.1**  
**WEIGHING, SAMPLING AND ANALYSIS**

**WEIGHING**

(1) Except as provided in 1(e) below, the weight of the Coal delivered shall be determined by Buyer.

(a) Buyer's belt scales shall be maintained to within plus or minus twenty-five hundredths of one percent ( $\pm 0.25\%$ ) accuracy between acceptance tests ("Material Tests"). Buyer's belt scales shall be tested and adjusted, if necessary, in accordance with the guidelines outlined by the applicable National Institute of Standards and Technology ("NIST") Handbook #44 provisions in effect at the time of such testing, or other procedures which shall be mutually acceptable to Seller and Buyer. Maintenance tests, using simulated load, shall be conducted at least once each month. Material tests to confirm belt scale accuracy shall be conducted at least once each year. Buyer shall inform Seller of anticipated test schedules and results of such testing and adjustment and shall notify Seller at least three (3) Business Days prior to any Material test.

(b) Buyer shall give prompt notice by telephone or facsimile and confirm such notice in writing to Seller if and when any scales are discovered to be in error beyond the limits established above. Seller shall have the right, but not the duty, to have a representative present at any and all times to observe the determination of weights and scale testing. If Seller should at any time question the accuracy of the weights thus determined, Seller shall so advise Buyer and confirm the same in writing, and Buyer shall arrange to test the scales. If such test shows the scales to be in error, they shall be adjusted to the required accuracy established above. If such test requested by Seller shows the scales to be within the applicable limits established above for the respective scale, then Seller shall pay all costs of such test; otherwise Buyer shall pay all such cost.

(c) If, upon testing pursuant to the above paragraph, the scales are determined to be in error beyond the limits established above, an adjustment of the payment to Seller shall be made based on the assumption that the condition causing the scales to be in error beyond such limits shall have existed with respect to all Coal unloaded on and after thirty (30) calendar days prior to Seller's written notification to Buyer that Seller questions the accuracy of the weights or the date of the previous scale test, whichever is later. Such adjustments shall be in an amount equal to the difference in the weights as specified in the applicable invoices and the weights that would have been obtained had the scales not been inaccurate, multiplied by the price per Ton as stated in said invoices.

If, upon any regular testing of the scales by Buyer, the scales are determined to be in error beyond the limits established above, an adjustment shall be made in the same manner provided in the preceding paragraph, such adjustment to be based on the assumption that the condition causing the scales to be in error beyond such limits shall have existed with respect to all shipments weighed on and after a date thirty (30) calendar days prior to such determination, or the date of the previous scale testing, whichever is later.

(d) Any payments due by either Party to the other, as a result of adjustment and/or payment of costs made pursuant to this Schedule 8.1, shall be paid within thirty (30) calendar days from the date of invoice by either Party regarding the determination thereof.

(e) During any period when Buyer's belt scales are inoperable, determination of the quantities of Coal delivered shall be made (i) by reference to Seller's weights if available or (ii) if Seller's weights are not available, by a procedure to be established at such time by agreement of Buyer and Seller.

### **SAMPLING AND ANALYSIS**

(2) For all sampling conducted hereunder, Seller and Buyer shall show evidence of a bias test conducted within the past five (5) years. Such testing shall be completed in accord with American Society for Testing and Materials ("ASTM") D-6518 as most recently revised or using procedures as mutually agreed. Mechanical samplers shall be maintained to the conditions established at the time of the bias test and critically inspected in accord with ASTM D-4702 as most recently revised.

(a) Barge Coal. Seller shall sample the Coal or shall provide for the Coal to be sampled as it is loaded into each barge, analyze the sample(s) so obtained, and notify Buyer of the short proximate (calorific value per pound, percent moisture, percent ash, and percent sulfur) average analytical results of each barge. Seller's analysis shall be reported to the recipients, and in the format, specified by Buyer. Seller's notification shall include the weight and identifying number of each barge shipped, and shall be provided within forty-eight (48) hours after the Coal is loaded into the barge for shipment, or within seventy-two (72) hours should the barge be loaded on a Friday.

The Coal shall be sampled and analyzed at Seller's expense in accordance with ASTM standards, or other such methods which shall be mutually agreeable to Buyer and Seller.

(b) All Coal delivered hereunder shall be sampled by Buyer or Buyer's agent using a mechanical sampling system before it is commingled with other Coal and approximately at the time it is weighed by Buyer on Buyer's scales. Buyer shall determine, by proper analyses made in its laboratory and at its expense, the "as-received" quality and characteristics of the Coal and shall promptly provide the results of such analysis to Seller. The sampling and analyses shall be performed in accordance with methods approved by ASTM, or such other method as may be mutually acceptable. For purposes of determining moisture hereunder, the two-stage procedure as defined in ASTM D3302 shall be used.

(c) Except as otherwise provided in this Schedule 8.1, the results of the sampling and analyses by Buyer shall be accepted as the quality and characteristics of the Coal unloaded hereunder at each respective consigned destination. Each Coal sample collected by Buyer shall be divided into three (3) subsamples. One (1) subsample shall be immediately analyzed by Buyer for the governing contractual analysis. One (1) subsample shall be sent to Seller, for analysis at Seller's request. The final subsample shall be retained for thirty (30) days following the close of the Half-Month in which Buyer received the Coal for purposes of a referee analysis. Further, for Coal delivered by conveyor belt to the Mitchell Plant, one (1) additional sample which need not be divided into subsamples shall be taken at a minimum of every four (4) hours of conveyor belt Coal shipments and promptly provided to Seller at the Mitchell Plant entrance. Such sample shall be immediately analyzed by Seller. If the results of such analysis do not meet the Applicable Lot Specifications or the requirements of footnote (D) as set forth in Schedule 3.1-A, the Mitchell Plant materials handling personnel and American Electric Power's Vice President of Fuel Procurement shall be notified immediately of such non-conforming Coal.

(d) In the event of disagreement as to the results of the analysis reported by Buyer, Seller

may request analysis of the referee sample part by an independent laboratory mutually selected by Buyer and Seller. If the results of the referee analysis and Buyer's analysis are within ASTM (interlaboratory) Reproducibility Limits, Buyer's analysis shall control for all purposes of this Agreement. Seller shall pay for the referee analysis. If the results are outside such ASTM Reproducibility Limits, then the results of the referee analysis shall control for all purposes of this Agreement.

(e) Unless Seller challenges, pursuant to Section 2(d) of this Schedule 8.1, the accuracy of either the sampling or analyses made by Buyer by written notice to Buyer by the 30<sup>th</sup> day of the calendar month following the calendar Half-Month in which the applicable lot(s) of Coal represented by such sample(s) and/or analysis (analyses) was (were) taken into account by Buyer, Seller shall be deemed to have waived all claims with respect to such sampling and analyses.

(f) It is the Parties' intention that each barge or daily delivery of Coal by conveyor belt hereunder shall be sampled; however, in the event Coal is received, unloaded, and taken into account but is not sampled, it shall be taken into account as outlined below. All Coal samples shall be analyzed unless there is reason to believe that the sample is suspect or is known to be non-representative of the sample lot from which it was extracted. If during any Half-Month sixty percent (60%) or more (by weight) of Coal delivered at a respective consigned destination during such period has been sampled, then the weighted average analytical results of such samples shall be applicable to all Coal delivered to such consigned destination during such Half-Month period. If less than sixty percent (60%) (by weight) of Coal delivered at a consigned destination during any such Half-Month period has been sampled, then the weighted average analytical results of the portion of sampled Coal shall apply to such portion, and the analytical results of the Seller's individual barge analyses as determined by Seller, as required in this Schedule 8.1, Section 2(a), shall apply to the portion of shipments not sampled at the consigned destination; provided, however, if Seller has not sampled and analyzed such portion in accordance with ASTM standards, then the weighted average analytical result of the last preceding Half-Month in which at least sixty percent (60%) (by weight) of the Coal delivered to such consigned destination was sampled by Buyer shall be applicable to such portion of the Coal delivered which was not sampled for such Half-Month period.



**SCHEDULE 10**  
**LIST OF DOCUMENTS**

|                     |
|---------------------|
| Map of McElroy Mine |
|                     |
|                     |
|                     |
|                     |
|                     |
|                     |
|                     |
|                     |
|                     |

Exhibit A

*[Note: A portion of this Corporate Guaranty will inure to the benefit of to Kentucky Power Company (successor by merger to Newco Kentucky Inc., which received a partial assignment of the guaranty from AEP Generation Resources Inc., the original assignee from Ohio Power Company)]*

Murray Form of Guaranty

**CORPORATE GUARANTY**

TO: OHIO POWER COMPANY its successors and assigns, and any of its subsidiaries ("OPC").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, and to induce OPC to do business with Consolidation Coal Company, a Delaware corporation and McElroy Coal Company, a Delaware corporation ("Debtors"), the undersigned Murray Energy Corporation, a \_\_\_\_\_ corporation ("Guarantor"), hereby unconditionally and absolutely guarantees the full and prompt payment and performance of all present and future obligations of Debtors to OPC, arising from OPC's sales and or purchases of coal and related services with Debtors under that certain Coal Purchase and Sale Agreement No. 07-77-05-900 , from which Guarantor shall receive substantial benefits, whether such obligations are due or to become due, secured or unsecured, absolute or contingent, joint or several (collectively, the "Obligations"). GUARANTOR'S OBLIGATION UNDER THIS CORPORATE GUARANTY ("GUARANTY") IS A GUARANTY OF PAYMENT AND NOT OF COLLECTION. SHOULD ANY PRESENT OR FUTURE OBLIGATIONS INCURRED BY DEBTORS NOT BE PAID WHEN DUE, OPC MAY PROCEED AGAINST THE GUARANTOR FOR SUCH OBLIGATIONS AT ANY TIME, WITHOUT NOTICE AND WITHOUT ANY PROCEEDING OR ACTION AGAINST DEBTORS, AND GUARANTOR HEREBY WAIVES ANY DEMAND FOR PAYMENT. This Guaranty is a primary obligation of Guarantor and shall be construed as an unconditional, absolute and continuing guaranty, irrespective of the validity or enforceability of the underlying agreements between OPC and Debtors or any other guaranteed amount, the absence of any action to enforce the same or any circumstances which might otherwise constitute a legal or equitable discharge or defense of a guarantor.

Guarantor hereby waives notice of acceptance of this Guaranty, of the creation or existence of any of the guaranteed Obligations and of any action by OPC in reliance hereon or in connection herewith; notice of the transactions between OPC and Debtors, notice of the execution and delivery, amendment, extension or renewal of any present or future instrument pertaining to Obligations, diligence, presentment, demand for payment, protest, notice of default by Debtors, and any other notice not expressly required by this Guaranty. Guarantor further consents, without further notice, to any extension or extensions of the time or times of payment of said Obligations, or any portion thereof, and to any change in form or amount, or renewal at any time, of such Obligations, or any portion thereof.

This Guaranty shall remain in full force and effect with respect to the Obligations until finally and irrevocably paid in full. No termination of this Guaranty shall affect any Obligations outstanding or contracted or committed for at the time of termination, and this Guaranty shall remain in full force and effect with respect to such Obligations until finally and irrevocably paid in full. In the event that any payment to OPC in respect of the Obligations is rescinded or must otherwise be returned for any reason whatsoever, Guarantor shall remain liable hereunder in respect of such Obligations as if such payment had not been made. Guarantor reserves the right to assert defenses that Debtors may have to payment of any Obligation other than defenses arising from the bankruptcy

or insolvency of Debtors or similar proceedings affecting Debtors and other defenses expressly waived hereby.

Guarantor's obligations hereunder with respect to the Obligations shall not be affected by the existence, validity, enforceability, perfection or extent of any collateral for such Obligations covered hereunder, nor by any extension, or the acceptance of any sum or sums on account of Debtors, or of any note or draft of Debtors and/or any third party, or security from Debtors. OPC shall not be obligated to file any claim relating to the Obligations owing to it in the event that Debtors becomes subject to bankruptcy, insolvency, reorganization, liquidation, dissolution, or similar proceedings affecting Debtors (whether voluntary or involuntary), and the failure of OPC to so file shall not affect Guarantor's obligations hereunder.

Should any present or future Obligations incurred by Debtors not be paid when due or at the time to which the same may be extended, OPC may proceed against Guarantor for such Obligations at any time, without notice and without any proceeding or action against Debtors. Guarantor agrees that OPC may resort to Guarantor for payment of any of the Obligations, whether or not OPC shall have resorted to any collateral security, or shall have proceeded against any other debtor principally or secondarily obligated with respect to any of the Obligations or any other guarantor thereof.

Guarantor shall not exercise any rights which it may have or acquire by way of subrogation until all of the Obligations are paid in full to OPC. If any amounts are paid to Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of OPC and shall forthwith be paid to OPC by Guarantor to reduce the amount of outstanding Obligations, whether matured or unmatured. Subject to the foregoing, upon payment of all of the Obligations to OPC, Guarantor shall be subrogated to the rights of OPC against Debtors, and OPC agrees to take at Guarantor's expense such actions as Guarantor may reasonably require to implement such subrogation.

The obligations of Guarantor hereunder shall not be affected by (a) any lack of validity or enforceability of or defect or deficiency in any agreement or any other documents executed in connection with any agreement; (b) any modification, extension or waiver of any of the terms of any agreement; (c) any change in the time, manner, terms or place of payment of or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to departure from any agreement or any other agreement or instrument executed in connection therewith; (d) any sale, exchange, release or non-perfection of any property standing as security for the liabilities hereby guaranteed or any liabilities incurred directly or indirectly hereunder or any setoff against any of said liabilities, or any release or amendment or waiver of or consent to departure from this Guaranty or any other guaranty, for all or any of the Obligations; (e) except as to applicable statutes of limitation, failure, omission, delay, waiver or refusal by OPC to exercise, in whole or in part, any right or remedy held by OPC with respect to any Agreement or any transaction under any Agreement; (f) any change in the existence, structure or ownership of Guarantor or any Debtors, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Debtors or its assets.

This Guaranty shall not be affected by any change in the entity status or business structure of Debtor. If Debtor's assets or a major portion thereof are transferred to any other party or parties otherwise than by operation of law, and if OPC enters into any transaction whereby such otherwise than by operation of law, and if OPC enters into any transaction whereby such transferee or transferees become indebted to OPC, this Guaranty, subject to all the other term

hereof, shall apply to any Obligations or balance of Obligations of such other transferee or transferees to OPC.

This Guaranty shall inure to and be binding upon the parties, their representatives, successors and assigns, provided that Guarantor may not assign or otherwise transfer any of its obligations under this Guaranty, whether by operation of law or otherwise, without the prior written consent of OPC, which consent may be arbitrarily withheld. OPC may assign this Guaranty in its sole discretion.

Guarantor represents and warrants that, at the time of execution and delivery of the Guaranty, nothing (whether financial condition or any other condition or situation) exists to impair in any way the obligations and liabilities of Guarantor to OPC under this Guaranty. Guarantor further represents and warrants to OPC that: (a) it is a corporation duly organized, validly existing and in good standing in its jurisdiction of incorporation, with full power and authority to make and deliver this Guaranty; (b) that the execution, delivery and performance of this Guaranty by Guarantor have been duly authorized by all requisite corporate action of Guarantor, and does not and will not violate provisions of any applicable law or Guarantor's certificate of incorporation or bylaws; and (c) that the person signing this Guaranty on Guarantor's behalf has been properly authorized by corporate action to do so.

This Guaranty constitutes the entire agreement among the parties and supersedes and cancels any prior agreements, undertakings, declarations and representations, whether written or oral, regarding the subject matter of this Guaranty. If any provision of this Guaranty is found by a court of competent jurisdiction to be void, illegal or otherwise unenforceable in that jurisdiction, such provision, to the extent of its invalidity, shall be severed from this Guaranty and be ineffective in that jurisdiction; provided, however, that such finding shall not affect the validity, legality or enforceability of such provision in any other jurisdiction or the validity, legality or enforceability of any other provision of this Guaranty.

The rights and duties of the Guarantor, Debtors and OPC under this Guaranty shall be construed and enforced in accordance with, and governed by the laws of, the State of Ohio.

IN WITNESS WHEREOF, the Guarantor has duly executed this Guaranty on this \_\_\_\_ day of \_\_\_\_\_, 2013

**GUARANTOR:**  
**Murray Energy Corporation**

By: \_\_\_\_\_  
Name: Roberty E. Murray  
Its: Chairman, President & Chief Executive Officer

Guarantor's Address: \_\_\_\_\_

Attn: \_\_\_\_\_

Guarantor's Federal Tax Identification Number \_\_\_\_ - \_\_\_\_\_

*[Note: A portion of the Corporate Guaranty will inure to the benefit of Kentucky Power Company (successor by merger to Newco Kentucky Inc., which received a partial assignment of the guaranty from AEP Generation Resources Inc., the original assignee from Ohio Power Company)]*

CONSOL Energy, Inc. Form of Guaranty

**CORPORATE GUARANTY**

TO: OHIO POWER COMPANY, its successors and assigns, and any of its subsidiaries ("OPC").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, and to induce OPC to do business with Consolidation Coal Company, a Delaware corporation and McElroy Coal Company, a Delaware corporation ("Debtors"), the undersigned CONSOL Energy Inc., a Delaware corporation ("Guarantor"), hereby unconditionally and absolutely guarantees the full and prompt payment and performance of all present and future obligations of Debtors to OPC under that certain Coal Purchase and Sale Agreement No. 07-77-05-900, as amended and revised, from time to time (the "CSA"), from which Guarantor shall receive substantial benefits, whether such obligations are due or to become due, secured or unsecured, absolute or contingent, joint or several, in the following maximum amounts per year:

- (a) For 2014, One Hundred Thirty Million Two Hundred Thirty Thousand U.S. Dollars (\$130,230,000.00) with respect to tons that are to be delivered in 2014;
- (b) For 2015, Sixty Five Million, One Hundred Fifteen Thousand U.S. Dollars (\$65,115,000.00) with respect to tons that are to be delivered in 2015; and
- (c) For 2016, Twenty One Million, Seven Hundred Ten Thousand U.S. Dollars (\$21,710,000) with respect to tons that are to be delivered in 2016 (collectively, the "Obligations").

GUARANTOR'S OBLIGATION UNDER THIS CORPORATE GUARANTY ("GUARANTY") IS A GUARANTY OF PAYMENT AND NOT OF COLLECTION. SHOULD ANY PRESENT OR FUTURE OBLIGATIONS INCURRED BY DEBTORS NOT BE PAID WHEN DUE, NOT MORE THAN QUARTERLY, OPC MAY PROCEED AGAINST THE GUARANTOR FOR SUCH OBLIGATIONS, EACH QUARTER, WITHOUT NOTICE AND WITHOUT ANY PROCEEDING OR ACTION AGAINST DEBTORS, AND GUARANTOR HEREBY WAIVES ANY DEMAND FOR PAYMENT.

This Guaranty is a primary obligation of Guarantor and shall be construed as an unconditional, absolute and continuing guaranty, irrespective of the validity or enforceability of the underlying agreements between OPC and Debtors or any other guaranteed amount, the absence of any action to enforce the same or any circumstances which might otherwise constitute a legal or equitable discharge or defense of a guarantor.

Guarantor hereby waives notice of acceptance of this Guaranty, of the creation or existence of any of the guaranteed Obligations and of any action by OPC in reliance hereon or in connection herewith; notice of the transactions between OPC and Debtors, notice of the execution and delivery, amendment, extension or renewal of any present or future instrument pertaining to Obligations, diligence, presentment, demand for payment, protest, notice of default by Debtors, and any other notice not expressly required by this Guaranty. Guarantor further consents, without further notice, to any extension or extensions of the time or times of payment of said Obligations, or any portion thereof, and to any change in form or amount, or renewal at any time,

of such Obligations, or any portion thereof.

This Guaranty shall remain in full force and effect with respect to the Obligations until finally and irrevocably paid in full. No termination of this Guaranty shall affect any Obligations outstanding or contracted or committed for at the time of termination, and this Guaranty shall remain in full force and effect with respect to such Obligations until finally and irrevocably paid in full. In the event that any payment to OPC in respect of the Obligations is rescinded or must otherwise be returned for any reason whatsoever, Guarantor shall remain liable hereunder in respect of such Obligations as if such payment had not been made. Guarantor reserves the right to assert defenses that Debtors may have to payment of any Obligation other than defenses arising from the bankruptcy or insolvency of Debtors or similar proceedings affecting Debtors and other defenses expressly waived hereby.

Guarantor's obligations hereunder with respect to the Obligations shall not be affected by the existence, validity, enforceability, perfection or extent of any collateral for such Obligations covered hereunder, nor by any extension, or the acceptance of any sum or sums on account of Debtors, or of any note or draft of Debtors and/or any third party, or security from Debtors. OPC shall not be obligated to file any claim relating to the Obligations owing to it in the event that Debtors becomes subject to bankruptcy, insolvency, reorganization, liquidation, dissolution, or similar proceedings affecting Debtors (whether voluntary or involuntary), and the failure of OPC to so file shall not affect Guarantor's obligations hereunder.

Should any present or future Obligations incurred by Debtors not be paid when due or at the time to which the same may be extended, OPC may proceed against Guarantor for such Obligations at any time, without notice and without any proceeding or action against Debtors. Guarantor agrees that OPC may resort to Guarantor for payment of any of the Obligations, whether or not OPC shall have resorted to any collateral security, or shall have proceeded against any other debtor principally or secondarily obligated with respect to any of the Obligations or any other guarantor thereof.

Guarantor shall not exercise any rights which it may have or acquire by way of subrogation until all of the Obligations are paid in full to OPC. If any amounts are paid to Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of OPC and shall forthwith be paid to OPC by Guarantor to reduce the amount of outstanding Obligations, whether matured or unmatured. Subject to the foregoing, upon payment of all of the Obligations to OPC, Guarantor shall be subrogated to the rights of OPC against Debtors, and OPC agrees to take at Guarantor's expense such actions as Guarantor may reasonably require to implement such subrogation.

The obligations of Guarantor hereunder shall not be affected by (a) any lack of validity or enforceability of or defect or deficiency in any agreement or any other documents executed in connection with any agreement; (b) any modification, extension or waiver of any of the terms of any agreement; (c) any change in the time, manner, terms or place of payment of or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to departure from any agreement or any other agreement or instrument executed in connection therewith; (d) any sale, exchange, release or non-perfection of any property standing as security for the liabilities hereby guaranteed or any liabilities incurred directly or indirectly hereunder or any setoff against any of said liabilities, or any release or amendment or waiver of or consent to departure from this Guaranty or any other guaranty, for all or any of the Obligations; (e) except as to

applicable statutes of limitation, failure, omission, delay, waiver or refusal by OPC to exercise, in whole or in part, any right or remedy held by OPC with respect to any Agreement or any transaction under any Agreement; (f) any change in the existence, structure or ownership of Guarantor or any Debtors, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Debtors or its assets.

This Guaranty shall not be affected by any change in the entity status or business structure of Debtors. If Debtor's assets or a major portion thereof are transferred to any other party or parties otherwise than by operation of law, and if OPC enters into any transaction whereby such transferee or transferees become indebted to OPC, this Guaranty, subject to all other terms hereof, shall apply to any Obligations or balance of Obligations of such other transferee or transferees to OPC.

This Guaranty shall inure to and be binding upon the parties, their representatives, successors and assigns, provided that Guarantor may not assign or otherwise transfer any of its obligations under this Guaranty, whether by operation of law or otherwise, without the prior written consent of OPC, which consent may be arbitrarily withheld. OPC may assign this Guaranty in its sole discretion.

Guarantor represents and warrants that, at the time of execution and delivery of the Guaranty, nothing (whether financial condition or any other condition or situation) exists to impair in any way the obligations and liabilities of Guarantor to OPC under this Guaranty. Guarantor further represents and warrants to OPC that: (a) it is a corporation duly organized, validly existing and in good standing in its jurisdiction of incorporation, with full power and authority to make and deliver this Guaranty; (b) that the execution, delivery and performance of this Guaranty by Guarantor have been duly authorized by all requisite corporate action of Guarantor, and does not and will not violate provisions of any applicable law or Guarantor's certificate of incorporation or bylaws; and (c) that the person signing this Guaranty on Guarantor's behalf has been properly authorized by corporate action to do so.

This Guaranty constitutes the entire agreement among the parties and supersedes and cancels any prior agreements, undertakings, declarations and representations, whether written or oral, regarding the subject matter of this Guaranty, specifically that corporate guaranty dated January 5, 2006, as amended. If any provision of this Guaranty is found by a court of competent jurisdiction to be void, illegal or otherwise unenforceable in that jurisdiction, such provision, to the extent of its invalidity, shall be severed from this Guaranty and be ineffective in that jurisdiction; provided, however, that such finding shall not affect the validity, legality or enforceability of such provision in any other jurisdiction or the validity, legality or enforceability of any other provision of this Guaranty.

The rights and duties of the Guarantor, Debtors and OPC under this Guaranty shall be construed and enforced in accordance with, and governed by the laws of, the State of Ohio.

This Guaranty shall be effective on the date of closing of the transaction between Murray Energy Corporation and CONSOL Energy Inc. under that certain Stock Purchase Agreement, dated October 25, 2013. As a courtesy, OPCO shall provide Guarantor notice of default or non-performance of Debtors under the CSA and notice of any demand for payment hereunder.

IN WITNESS WHEREOF, the Guarantor has duly executed this Guaranty on this \_\_\_\_ day of \_\_\_\_\_, 2013

**GUARANTOR:**  
**CONSOL Energy Inc.**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Its:** \_\_\_\_\_

**Guarantor's Address: CNX Center**

**1000 CONSOL Energy Drive  
Canonsburg, PA 15317  
Attn: James Grech, EVP and Chief Commercial Officer**

**Guarantor's Federal Tax Identification Number 51-0337383**