COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE	**)**	
APPLICATION OF THE FUEL ADJUSTMENT	**)**	
CLAUSE OF LOUISVILLE GAS AND	**)**	**CASE NO. 2020-00248**
ELECTRIC COMPANY FROM NOVEMBER 1,	**)**	
2019 THROUGH APRIL 30, 2020	**)**	

RESPONSE OF
LOUISVILLE GAS AND ELCTRIC COMPANY
TO
COMMISSION STAFF'S FIRST REQUEST FOR INFORMATION
DATED AUGUST 19, 2020

FILED: SEPTEMBER 2, 2020

VERIFICATION

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

The undersigned, **Delbert Billiter,** being duly sworn, deposes and says that he is Manager — LG&E and KU Fuels for LG&E and KU Services Company, and that he has personal knowledge of the matters set forth in the responses for which he is identified as the witness, and the answers contained therein are true and correct to the best of his information, knowledge and belief.

Delbert Billiter

Delbert Billiter

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 31st day of August 2020.

Judy Schooler (SEAL)

Notary Public

My Commission Expires:

Judy Schooler
~~Notary Public, ID~~ No. 603967
State at Large, Kentucky
Commission Expires 7/11/2022

VERIFICATION

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

The undersigned, **Michael P. Drake,** being duly sworn, deposes and says that he is Director, Generation Services for LG&E and KU Services Company, and that he has personal knowledge of the matters set forth in the responses for which he is identified as the witness, and the answers contained therein are true and correct to the best of his information, knowledge and belief.

Michael P. Drake

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 31st day of August 2020.

Judy Schooler (SEAL)

Notary Public

My Commission Expires:

Judy Schooler
Notary Public, ID No. 603967
State at Large, Kentucky
Commission Expires 7/11/2022

VERIFICATION

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

The undersigned, **Andrea M. Fackler,** being duly sworn, deposes and says that she is Manager, Revenue Requirement/Cost of Service for LG&E and KU Services Company, and that she has personal knowledge of the matters set forth in the responses for which she is identified as the witness, and the answers contained therein are true and correct to the best of her information, knowledge and belief.

Andrea M. Fackler
Andrea M. Fackler

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 31st day of August 2020.

Judy Schooler (SEAL)

Notary Public

My Commission Expires:

Judy Schooler
~~Notary Public, ID No. 603967~~
State at Large, Kentucky
Commission Expires 7/11/2022

VERIFICATION

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

The undersigned, **Charles R. Schram,** being duly sworn, deposes and says that he is Director — Power Supply, for LG&E and KU Services Company, and that he has personal knowledge of the matters set forth in the responses for which he is identified as the witness, and the answers contained therein are true and correct to the best of his information, knowledge and belief.

Charles R. Schram
Charles R. Schram

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 31st day of August 2020.

Judy Schooler (SEAL)

Notary Public

My Commission Expires:

Judy Schooler
~~**Notary Public, ID No.**~~ **603967**
State at Large, Kentucky
Commission Expires 7/11/2022

VERIFICATION

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

The undersigned, **Stuart A. Wilson,** being duly sworn, deposes and says that he is Director — Energy Planning, Analysis and Forecast for LG&E and KU Services Company, and that he has personal knowledge of the matters set forth in the responses for which he is identified as the witness, and the answers contained therein are true and correct to the best of his information, knowledge and belief.

Stuart A. Wilson

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 31st day of August 2020.

(SEAL)

Notary Public

My Commission Expires:

Judy Schooler
~~Notary Public, ID No. 603967~~
State at Large, Kentucky
Commission Expires 7/11/2022

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information
Dated August 19, 2020

Case No. 2020-00248

Question No. 1

Responding Witness: Delbert Billiter

Q-1. For the period under review, provide the amount of coal purchased in tons and the percentage of purchases that were spot versus contract.

A-1. During the review period, LG&E purchased 3,346,835 tons of coal.

Spot:	0%	(0 tons)
Contract:	100%	(3,346,835 tons)

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information
Dated August 19, 2020

Case No. 2020-00248

Question No. 2

Responding Witness: Delbert Billiter

Q-2. For the period under review, list each coal purchase made under a long-term contract (one year or greater). For each purchase, list:

a. Contract or purchase order number;

b. The supplier's name;

c. The location(s) of production facilities from which the coal is sourced;

d. The method of delivery, (i.e., barge, truck, rail, other);

e. The actual quantity received during the review period;

f. The tonnage requirement for the review period; and

g. Current price paid per ton.

A-2. See attached. Page 1 of the attachment shows only the actual quantity received by LG&E under each contract, and page 2 shows the actual combined quantity received by LG&E and KU under each contact.

LG&E Coal Purchases (unloaded) under long-term contract
November 1, 2019 through April 30, 2020

(a)	(b)	(c)	(d)	(e)	(f)	(g)
Contract/PO	Supplier	Location of Production Facility	Delivery Method	Actual Quantity Received	Tonnage Requirement*	Current Price** ($/ton)
J14001B	Alliance Coal LLC	W-KY	Barge	117,010	213,444	$39.45
J17002	Alliance Coal LLC	W-KY	Barge	212,748	333,333	$44.31
J18003	Alliance Coal LLC	W-KY	Barge	311,132	500,000	$42.42
J18009	Alliance Coal LLC	W-KY	Barge	577,017	1,000,000	$38.93-KY, $41.15-WV
J19001	Alliance Coal LLC	W-KY	Rail	385,644	475,000	$41.00-Dotiki; $42.10 Warrior
J18008	Arch Coal Sales Company Inc.	WY	Barge	-	100,000	$12.65
J20002	Arch Coal Sales Company Inc.	WY	Barge	-	122,727	$12.44
J20001	Contura Coal Sales LLC	PA	Barge	-	33,333	$40.60
J18001	Hartshorne Mining Group LLC	W-KY	Barge	204,501	500,000	$40.50
J18005	Knight Hawk Coal, LLC	IL	Barge	93,279	250,000	$37.31
J19003	Peabody COALSALES LLC	IN	Barge, Rail	6,791	180,000	$41.10-B, $38.80-R
J16006	The American Coal Company	IL, WV	Barge	8,882	325,000	$40.39-IL, $39.39-WV
J17004	The American Coal Company	IL	Barge	499,816	808,333	$38.70-IL
J19004	Western Ky Minerals, Inc	W-KY	Barge	53,265	30,000	$38.50
J14010C	Western Ky Consolidated Resources, LLC	W-KY	Rail, Barge	-	16,667	$42.00
J16017B	Western Ky Consolidated Resources, LLC	W-KY	Rail, Barge	139,107	100,000	$41.60
J18002B	Western Ky Consolidated Resources, LLC	W-KY	Rail, Barge	651,908	750,000	$46.31
J19002	White Stallion Energy LLC	IL	Barge	85,735	210,000	$42.64
				3,346,835		

*Tonnage Requirement is a ratable volume for combined LG&E and KU coal station shipments

**Prices vary by source/transportation type. Prices as of 4/30/20

Combined LG&E and KU Coal Purchases (unloaded) under long-term contract
November 1, 2019 through April 30, 2020

(a)	(b)	(c)	(d)	(e)	(f)	(g)
		Location of	Delivery	Actual Quantity	Tonnage	Current Price**
Contract/PO	Supplier	Production Facility	Method	Received	Requirement*	($/ton)
J14001B	Alliance Coal LLC	W-KY	Barge	233,376	213,444	$39.45
J17002	Alliance Coal LLC	W-KY	Barge	330,990	333,333	$44.31
J18003	Alliance Coal LLC	W-KY	Barge	470,571	500,000	$42.42
J18009	Alliance Coal LLC	W-KY, WV	Barge	1,030,012	1,000,000	$38.93-KY , $41.15-WV
J19001	Alliance Coal LLC	W-KY	Rail	385,644	475,000	$41.00-Dotiki; $42.10 Warrior
J18008	Arch Coal Sales Company Inc.	WY	Barge	174,426	100,000	$12.65
J20002	Arch Coal Sales Company Inc.	WY	Barge	142,508	122,727	$12.44
J20001	Contura Coal Sales LLC	PA	Barge	64,446	33,333	$40.60
J18001	Hartshorne Mining Group LLC	W-KY	Barge	307,159	500,000	$40.50
J18005	Knight Hawk Coal, LLC	IL	Barge	280,150	250,000	$37.31
J19003	Peabody COALSALES LLC	IN	Barge, Rail	219,545	180,000	$41.10-B, $38.80-R
J16006	The American Coal Company	IL, WV	Barge	232,666	325,000	$40.39-IL, $39.39-WV
J17004	The American Coal Company	IL	Barge	767,305	808,333	$38.70-IL
J19004	Western Ky Minerals, Inc	W-KY	Barge	104,794	30,000	$38.50
J14010C	Western Ky Consolidated Resources, LLC	W-KY	Rail, Barge	4,760	16,667	$42.00
J16017B	Western Ky Consolidated Resources, LLC	W-KY	Rail, Barge	139,107	100,000	$41.60
J18002B	Western Ky Consolidated Resources, LLC	W-KY	Rail, Barge	790,732	750,000	$46.31
J19002	White Stallion Energy LLC	IL	Barge	199,641	210,000	$42.64
				5,877,832	5,947,837	

*Tonnage Requirement is a ratable volume for combined LG&E and KU coal station shipments

**Prices vary by source/transportation type. Prices as of 4/30/20

Attachment to Response to Question No. 2

BILLITER

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information
Dated August 19, 2020

Case No. 2020-00248

Question No. 3

Responding Witness: Delbert Billiter

Q-3. As of the last day of the review period:

a. State the coal inventory level in tons and in number of days' supply. Provide this information by generating station and in the aggregate.

b. Describe the criteria used to determine number of days' supply.

c. State the target coal inventory level for each generating station and for the total system.

d. If actual coal inventory exceeds the target inventory by ten days' supply, state the reasons for the excess inventory.

e. State whether any significant changes in the current coal inventory target are expected in the next 12 months. If so, state the expected change and the reasons for this change.

A-3. a. As of April 30, 2020:

Mill Creek[1]	576,241 Tons; 39 Days	Target 20-39 Days
Trimble County[2,3]	217,796 Tons; 38 Days	Target 21-43 Days
Total	794,037 Tons; 39 Days	Target 19-38 Days

[1] Inventory listed for Mill Creek does not include the 75,000 tons sold to the Refined coal facility operator that remains in the onsite coal pile, as previously discussed in Case No. 2015-00264.

[2] Inventory listed for Trimble County does not include the 32,400 tons sold to the Refined coal facility operator that remains in the onsite coal pile, as previously discussed in Case No. 2015-00264.

[3] Trimble County coal inventory tons are LG&E's allocated ownership of both high sulfur coal, which is used in Unit 1 and Unit 2, and PRB coal, which is used only in Unit 2. The days in inventory and target range are calculated on a combined basis regardless of ownership.

b. The method of calculating days in inventory is based on each plant's coal burn capability (coal tons in inventory divided by 90% of each generating unit's heat input description from its air permit to operate).

   Upper and lower days of inventory targets were established for each plant taking into consideration the plant's operating parameters. Each plant's "least cost" inventory range is established annually during the planning process taking into account the risk of coal delivery disruptions, potential coal burn volatility, procurement reaction time for short term coal supply, cost of unserved energy, and current coal and electricity prices.

c. See the response to part (a) above.

d. Not applicable.

e. LG&E does not expect significant changes to its current coal inventory target levels; however, during the Companies' planning cycle minor adjustments may be made to the inventory targets if warranted.

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information
Dated August 19, 2020

Case No. 2020-00248

Question No. 4

Responding Witness: Delbert Billiter

Q-4. List each written coal-supply solicitation issued during the period under review.

a. For each solicitation, provide the date of the solicitation, the type of solicitation (contract or spot), the quantities solicited, a general description of the quality of coal solicited, the period over which deliveries were requested, and the generating unit(s) for which the coal was intended.

b. For each solicitation, state the number of vendors to whom the solicitation was sent, the number of vendors who responded, and the selected vendor. Provide the bid tabulation sheet or corresponding document that ranked the proposals. (This document should identify all vendors who made offers.) State the reasons for each selection. For each lowest-cost bid not selected, explain why the bid was not selected.

A-4. a. SOLICITATION 1

Date:	February 14, 2020
Contract/Spot:	Contract or Spot
Quantities:	No minimum or maximum specified
Quality:	Suitable for KU's Ghent Station, LG&E's Mill Creek Station, and KU's and LG&E's Trimble County Station
Period:	April 1, 2020 through December 31, 2020 – Spot 2021 and beyond - Contract

Generating Units: all units at Ghent, Trimble County and Mill Creek Stations

b. Number of vendors sent a solicitation: 72

Number of vendors responded: 10 companies / 11 offers

Selected vendor(s): No purchases were made from this solicitation because of the uncertainty in the level of generation and coal burn due to COVID-19.

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information
Dated August 19, 2020

Case No. 2020-00248

Question No. 5

Responding Witness: Delbert Billiter

Q-5. List each oral coal-supply solicitation issued during the period under review.

a. For each solicitation, state why the solicitation was not written, the date(s) of the solicitation, the quantities solicited, a general description of the quality of coal solicited, the time period over which deliveries were requested, and the generating unit(s) for which the coal was intended.

b. For each solicitation, identify all vendors solicited and the vendor selected. Provide the tabulation sheet or other document that ranks the proposals. (This document should identify all vendors who made offers.) State the reasons for each selection. For each lowest-cost bid not selected, explain why the bid was not selected.

A-5. There were no oral coal supply solicitations during the period under review.

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information
Dated August 19, 2020

Case No. 2020-00248

Question No. 6

Responding Witness: Charles R. Schram

Q-6. For the period under review, list each vendor from whom natural gas was purchased for generation and the quantities and the nature of each purchase (i.e., spot or contract).

A-6. See attached for the list of vendors, associated quantities, and the nature of each natural gas purchase.

Vendor	Type [1]	MMBTU
BP Energy Company	Spot	776,937
Castleton Commodities Merchant Trading L.P.	Spot	20,000
Symmetry Energy Solutions, LLC	Spot	122,400
CIMA Energy, LP	Spot	124,985
Colonial Energy, Inc.	Spot	330,000
ConocoPhillips Company	Spot	42,600
Direct Energy Business Marketing, LLC	Spot	116,600
DTE Energy Trading, Inc.	Spot	58,266
Eco-Energy Natural Gas, LLC	Spot	360,875
EDF Trading North America, LLC	Spot	9,600
ENGIE Energy Marketing NA, Inc.	Spot	5,000
Exelon Generation Company, LLC	Spot	316,500
Hartree Partners, LP	Spot	27,000
Macquarie Energy, LLC	Spot	39,500
NextEra Energy Marketing, LLC	Spot	1,680,765
NJR Energy Services Company	Spot	20,000
Sequent Energy Management, L.P.	Spot	531,000
Shell Energy North America (US), L.P.	Spot	878,694
Southwest Energy, L.P.	Spot	196,845
Spire Marketing Inc.	Spot	125,540
Tenaska Marketing Ventures	Spot	6,085,759
Texla Energy Management, Inc.	Spot	56,000
Tennessee Gas Pipeline Company, L.P.	Spot	2,178
Tennessee Valley Authority	Spot	120,252
Twin Eagle Resource Management, LLC	Spot	169,800
Uniper Global Commodities North America LLC	Spot	5,000
United Energy Trading, LLC	Spot	212,421
Wells Fargo Commodities, LLC	Spot	70,900
Columbia Gas of Kentucky, Inc.	GSO Customer [2]	371
LG&E Gas Supply	Special Contract[3]	126,074
EDF Trading North America, LLC	Forward	614,901
ENGIE Energy Marketing NA, Inc.	Forward	910,000
J. Aron & Company LLC	Forward	3,007,987
Mercuria Energy America, LLC	Forward	300,000
NextEra Energy Marketing, LLC	Forward	610,000
Spire Marketing Inc.	Forward	1,215,851
Uniper Global Commodities North America LLC	Forward	608,261
Wells Fargo Commodities, LLC	Forward	610,000
	Total Volume	20,508,862

[1] Spot refers to gas purchases delivered during the next gas day following the transaction. Friday transactions include Sat, Sun, & Mon (holiday weekends can cover four days). Forward refers to gas purchased for delivery periods typically starting after the current month.

[2] KU is a General Sales Other (GSO) customer of Columbia Gas of Kentucky for the Haefling Plant; no volume purchase commitments.

[3] LG&E is the local gas distribution company; no volume purchase commitments.

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information
Dated August 19, 2020

Case No. 2020-00248

Question No. 7

Responding Witness: Charles R. Schram

Q-7. For the period under review, state whether there were any instances in which a natural gas generating unit could not be operated when it otherwise would have run due to pipeline constraints or natural gas being unavailable.

A-7. There were no instances of generating unit restrictions due to pipeline constraints or natural gas unavailability.

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information
Dated August 19, 2020

Case No. 2020-00248

Question No. 8

Responding Witness: Delbert Billiter / Charles R. Schram

Q-8. State whether there have been any changes to hedging activities for coal or natural gas purchases used for generation since the previous FAC review proceeding. If so, describe the changes in detail.

A-8. There have been no changes to the physical hedging practices or guidelines since the previous review proceeding. LG&E does not engage in financial hedging activities for its coal or natural gas purchases.

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information
Dated August 19, 2020

Case No. 2020-00248

Question No. 9

Responding Witness: Delbert Billiter / Charles R. Schram

Q-9. State whether LG&E has audited any of its fuel or transportation contracts during the period under review. If so, for each audited contract:

a. Identify the contract;

b. Identify the auditor; and

c. State the results of the audit and describe the actions that LG&E took as a result of the audit.

A-9. No. LG&E has not conducted any financial audits of fuel or transportation contracts.

LG&E's Manager, Fuels Technical Services or LG&E's Mining Engineer conducts scheduled on-site reviews and inspections of the mining operations, scales and sampling systems of each vendor up to twice a year, and likewise may conduct unscheduled visits. Additionally, LG&E employees may visit a vendor as needed to address problems and issues at any time.

a-c. Not applicable.

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information
Dated August 19, 2020

Case No. 2020-00248

Question No. 10

Responding Witness: Delbert Billiter / Charles R. Schram

Q-10.

a. State whether LG&E is currently involved in any litigation with its current or former fuel suppliers or transportation vendors. If yes, for each litigation:

(1) Identify the supplier or vendor;

(2) Identify the contract involved;

(3) State the potential liability or recovery to LG&E;

(4) List the issues presented; and

(5) Provide a copy of the complaint or other legal pleading that initiated the litigation and any answers or counterclaims. If a copy has previously been filed with the Commission, provide the date on which it was filed and the case in which it was filed.

b. State the current status of all litigation with suppliers or vendors.

A-10.

a. LG&E is not involved in direct litigation with a supplier but is involved in a Chapter 11 bankruptcy process with one of its coal suppliers.

(1) Hartshorne Mining Group, LLC

(2) Coal Supply Agreement between LG&E and KU and Hartshorne Mining Group, LLC (dated as of October 15, 2015, as amended) J18001

(3) LG&E would have no liability other than continuing to perform the terms of J18001. If the court approves the proposed bankruptcy sale that includes an Asset Purchase Agreement that allows Hartshorne to assign J18001 to its lender Tribeca, then LG&E would continue to receive coal under this agreement. If LG&E's objection to such assignment is

sustained and the contract is ultimately terminated, LG&E would enter the market for replacement coal.

(4) Hartshorne filed for Chapter 11 relief in U.S. Bankruptcy Court for the Western District of Kentucky (case no. 20-40133-thf) on February 20, 2020 and on June 29, 2020, after receiving no offers for their assets, filed an Asset Purchase Agreement that, if approved by the court, would allow them to assign the KU contract to Tribeca-related parties. Tribeca would not purchase the Popular Grove Mine, source mine of the agreement, but proposed to use a broker to source the coal from other unknown mines. KU filed an Objection to the Assumption and Assignment (doc #294) on May 14, 2020, an Objection to Proposed Contract Assignment (doc #448) to Tribeca on July 2, 2020 and a Reply in Support of Objection (doc #468) on July 9, 2020. After discovery, depositions and a three-day hearing, the bankruptcy court (Judge Thomas Fulton) issued a ruling on August 14, 2020 sustaining KU's objection to the assignment of J18001 to Tribeca.

(5) Attached is a copy of the August 14, 2020 order in the proceeding, which summarizes the material issues and reflects the current status. Copies of additional court pleadings and documents, including those referenced above, are available on-line via Stretto, the debtor's public bankruptcy service provider, at the link:

https://cases.stretto.com/hartshorne/court-docket/#search

b. Hartshorne has the option to request the court to reconsider, appeal the decision or file a new Asset Purchase Agreement, proposing potential different contract assignment arrangements. On August 27, 2020, Hartshorne filed a Notice of Appeal with the court. LG&E will evaluate and decide next steps once Hartshorne identifies the basis of their appeal.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

IN RE:	)	
	)	
HARTSHORNE HOLDINGS, LLC, *et al.*	)	**Case No. 20-40133-thf**
	)	
	)	**Chapter 11**
Debtors	)	
	)	

* * * * *

ORDER

This matter is before the Court on the Notice of Debtors' Entry Into, And Request for Approval of, An Asset Purchase Agreement With The Tribeca Secured Parties. [R. 436]. After failing to receive any qualified bids for the sale of substantially all their assets, the above-captioned debtors and debtors-in-possession[1] (collectively, **"Hartshorne" or "Debtors")** now instead seek to assign two coal supply agreements: a supply contract with Louisville Gas and Electric Company ("**LG&E**") and Kentucky Utilities Company ("**KU**"), and a second supply contract with Ohio Valley Electric Corporation-Indiana Kentucky Electric Company ("**IKEC**") (LG&E/KU and IKEC together, the "**Utilities**") (both contracts together, the "**Supply Contracts**").

Pursuant to the terms of the Sale Notice and accompanying Asset Purchase Agreement ("**APA**") between Debtors and their tentative buyer, Tribeca Global Resources Credit Pty Ltd, as Agent for the Tribeca Lenders ("**Tribeca**"), Debtors propose that Tribeca be allowed to place a

[1] The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: Hartshorne Holdings, LLC (3948); Hartshorne Mining Group, LLC (0063); Hartshorne Mining, LLC (1941); and Hartshorne Land, LLC (5582). The Debtors' headquarters are located at 373 Whobry Road, Rumsey, Kentucky 42371. Debtors' bankruptcy cases are being administered jointly pursuant to Fed. R. Bankr. P. 1015(b).

$14,000,000 credit bid in order to purchase the Supply Contracts, which would require excising from those contracts the provisions that identify Hartshorne's Buck Creek mines as the coal supply source and delivery point because those mines are now permanently closed. In turn, Tribeca, as assignee, would assume both Supply Contracts and, through a yet-to-be-identified third-party coal supplier, ensure that the Utilities continue to receive any and all coal they need and, more importantly, that all coal the Utilities receive satisfies the contracted-for specifications in the Supply Contracts, despite the necessary changes to source, supplier and delivery point.

Both Utilities have objected to the APA's purported assignment of the two Supply Contracts to Tribeca. The Utilities argue that Debtors' assignment of the Supply Contracts constitutes improper "cherry-picking" of the original negotiated, agreed-upon terms, namely the specific mine source. Both Utilities argue that, while Hartshorne makes assurances that the new downstream supplier will be perfectly capable of providing coal that meets the required specifications, the actual contracted-for geographical location – the Kentucky #9 seam in the Buck Creek mine complex – is a material term that cannot be removed without altering the entire nature of the agreement. The Utilities stress that, without greater certainty as to their future coal source and the future broker's identity in the event of assignment, Debtors have not provided adequate assurance under 11 U.S.C. § 365(b). Debtors and Tribeca counterargue that the proposed assignment is a sound exercise of their business judgment and Debtors' best way to shed $14 million of senior secured debt and avoid rejection damages claims from the Utilities.

For reasons set forth more fully below, the objections to the assignment of the Supply Contracts will be sustained, and the terms of the APA and Sale Notice as they currently exist will be rejected.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Organized in 2013, the Hartshorne companies are a group of coal mining companies and, collectively, are a wholly-owned subsidiary of Paringa Resources Limited ("**Paringa**"), Debtors' non-debtor Australian parent company and guarantor of the Supply Contracts at issue. The Tribeca Secured Parties[2], Debtors' post-petition lender and the purported assignee and purchaser of the Supply Contracts, is an Australian private equity firm and holder of a security interest in most or all of Debtors' assets. After accounting for Tribeca's pre-petition loan and DIP loan to Hartshorne, Tribeca has a lien for approximately $50 million dollars in Debtors' assets. Tribeca itself owns no mines or mine properties but would serve as Debtors' intermediary coal broker to find a replacement source, per the APA and Sale Notice.

Before filing bankruptcy, Hartshorne previously operated the Buck Creek Mining Complex, which included two mines located at the Kentucky #9 seam: 1) the Poplar Grove Mine (also known as the Buck Creek No. 2 Mine) which became operational in 2019, and 2) the permitted-but-never-constructed Cypress Mine (the Buck Creek No. 1 Mine) which never produced any coal. Debtors have since ceased all operations and have removed the mining equipment from the Poplar Grove mine.

Prior to the closure of Hartshorne's Poplar Grove / Buck Creek No. 2 mine, LG&E and KU entered into a Coal Supply Agreement dated October 15, 2015, with Hartshorne Mining Group, LLC. The agreement provided for a five-year coal sales term from 2018 through 2022, and served as a mine-opening contract where it contemplated the eventual opening of a second

[2] Collectively, the Tribeca Secured Parties are Equity Trustees Limited, as Trustee of the Tribeca Global Natural Resources Credit Fund and Tribeca Global Natural Resources Credit Master Fund – and Tribeca Global Resources Credit Pty Ltd, Global Loan Agency Services Australia Nominees Pty Ltd, and Tribeca Global Natural Resources Limited.

mine on the Kentucky #9 seam (i.e. the Cypress / Buck Creek No. 1 mine, which ultimately never opened). Due to delays in completion of the Cypress mine, and Debtors' failure to hit coal production milestones set forth in the agreement, the parties amended the LG&E/KU Supply Contract twice. The first amendment extended the overall term to 2023. When no coal was delivered in 2018, the parties agreed to postpone delivery until April 2019 in a second amendment.[3]

Beginning in 2019, Hartshorne began to deliver coal from the Poplar Grove/Buck Creek No. 2 Mine to LG&E. The LG&E Supply Contract established, among other things, coal base quantity, quality, fixed price calculation, and process for making up delivery shortfalls. Notably, the contract specified that all coal sold to LG&E was to be sourced from the Kentucky #9 seam:

> § 4.1 Source. The coal sold hereunder shall be supplied from geologic seam Kentucky #9, from Hartshorne Mining, LLC's Cypress Creek Mine, also known as the Buck Creek No. 1 Mine, located in McLean and Hopkins Counties, Kentucky (the "Coal Property"), except to the extent Seller provides substitute coal in accordance with the terms of this Agreement. (. . .)

LG&E Supply Contract § 4.1, [R. 294-1 at 11]. As explained *supra*, LG&E and Hartshorne subsequently entered into two amended versions of this agreement which, among other things, expanded the original source to include the Buck Creek No. 2 Mine:

> D.1 In §4.1 Source the first sentence is hereby deleted and replaced with the following: "Source. The coal sold hereunder shall be supplied from geological seam Kentucky #9, from Hartshorne Mining, LLC's Cypress Creek Mine, also known as the Buck Creek No. 1 Mine and/or Hartshorne Mining, LLC's Poplar Grove Mine, also known as the Buck Creek No. 2 Mine, each located in McLean and Hopkins Counties, Kentucky (individually and collectively, the "Coal Property"), except to the extent Seller provides substitute coal in accordance with the terms of this Agreement."

[3] In other words, the first amendment relieved Hartshorne of coal production milestones, and the second amendment altered some invoicing and payment provisions.

The amendments never altered or moved the source from the Kentucky #9 seam. The LG&E Supply Contract also allowed for the delivery of substitute coal under certain specific conditions, with Section 4.5 of the Supply Contract defining "Substitute Coal:"

> § 4.5 Substitute Coal. In the event that Seller is unable to produce or obtain coal from the Coal Property in the quantities and of the quality required by this Agreement . . . to the extent Seller or its affiliates control active producing facilities or mines in the Illinois Basin other than the Coal Property, *Buyer will have the option of requiring that Seller supply substitute coal from such other facilities and mines* in accordance with all terms and conditions of this Agreement, including, without limitation, the price provisions of Section 8, the quality specifications of § 6.1, and the provisions of Section 5 concerning reimbursement to Buyer for increased transportation costs. Seller's delivery of coal not produced from the Coal Property *without having received the express written consent of Buyer shall constitute a material breach of this Agreement*.

Id. at § 4.6, [R. 294-1 at 14-15] (emphasis added). The LG&E Supply Contract further provides for a specific Barge Delivery Point ("the Buck Creek Dock at Mile Point 61.0 on the Green River") at Section 5.1 and the specifications for the bituminous coal to be supplied (e.g. "BTU/LB.: min. 11,200," "SULFUR: max. 2.80") at Section 6.1. [R. 294-1 at 15, 17]. The LG&E Supply Contract required ratable delivery, meaning coal was to arrive in installments over the course of the term. Regarding assignability, Section 18.12 sets forth the terms and conditions regarding Hartshorne's permissible assignment of the contract. [*Id.* at 46-47]. Hartshorne concedes it was unable to deliver all contracted-for volumes under the contract, but despite failing to meet its coal commitments, LG&E never opted to terminate the contract since the subsequent amendments reduced LG&E's purchase price to accommodate for the missed milestones. *See* 7/21 Trans., [R. 539 at 140-141].

Similarly, IKEC is party to a separate coal supply agreement with Hartshorne. IKEC and Debtors signed a Fuel Purchase Order effective August 31, 2018, which also sets forth the term, quantity, price, quality, and delivery point. Like the LG&E Supply Contract, the IKEC Supply Contract also identifies Debtors' source mine as the Poplar Grove mine[4] and details sampling and analysis procedures, quality adjustments, payment, and other standard terms and conditions.

* * * * *

Facing increasing liquidity challenges in a struggling industry, on February 20, 2020, Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. [R. 1]. In order to receive financing from their DIP Lenders, on March 6, 2020, Debtors filed a Motion for Entry of an Order (I) Establishing Bidding Procedures for the Sale of Substantially All Assets and (II) Granting Related Relief [R. 110], and a Motion for Entry of an Order or Orders Approving the Sale of Substantially All of the Debtors' Assets [R. 111]. On March 25, 2020, the Court entered an Order Establishing Bidding Procedures Relating to the Sales of All or a Portion of the Debtors' Assets, [R. 200], approving the bidding procedures which authorized Debtors to solicit the best offer for the sale of substantially all or a portion of their assets.

When no bidders were identified by the bid deadline of June 4, 2020, the auction was canceled. On June 15, 2020, Debtors filed an Auction Cancellation Notice, [R. 409], indicating that no Stalking Horse Purchaser was selected by the deadline, no qualified bids were received, and that the auction had been cancelled. Debtors' cancellation notice indicated that they were still evaluating how to proceed and were considering a potential sale with Tribeca. On June 26,

[4] "Source: Seller's Poplar Grove mine, from the West Kentucky No. 9 and No. 11 seams of coal located in McLean County, Kentucky." [R. 442 at 4], [R. 454 at 5], citing OVEC Supply Contract.

2020, Debtors filed a Sale Deadlines Continuance Motion, [R. 433] which the Court granted in a June 29, 2020 Order, [R. 435], establishing a Sale Objection Deadline.

On June 29, 2020, the Debtors filed the Notice of Debtors' Entry Into, and Request for Approval of, an Asset Purchase Agreement with the Tribeca Secured Parties now before the Court, [R. 436], seeking approval to sell the "Purchased Assets" through a proposed sale to the DIP Lenders, the Tribeca Secured Parties, under the APA dated June 29, 2020. As explained above, pursuant to the APA, Debtors seek to sell contracts and other limited assets to Tribeca, including the LG&E/KU and IKEC Supply Contracts, which Tribeca would purchase with a credit bid of $14,000,000. *See* [R. 436 at 3] for "Purchased Assets". The proposed sale to Tribeca would not include any of Debtors' owned or leased real property or any of the coal inventory therein, meaning Tribeca would not purchase Debtors' Buck Creek mines, equipment, inventory, or operations, and would only assume the Supply Contracts. Tribeca proposes that its $14 million purchase price, paid via credit bid, be used to first repay the DIP Loans, and then to partially repay Debtors' prepetition obligations. [*Id.* at 6].

Debtors received numerous written objections, from LG&E/KU and IKEC but also from other parties-in-interest[5], all opposing approval of the sale to Tribeca. These objections ranged from concerns with Debtors' business judgment in seeking to sell the Supply Contracts, [Rs. 446, 447, 449], objections regarding Debtors' ability to cure their defaults and provide adequate assurance of future performance (given that the future coal source remains unknown), [Rs. 442

[5] In addition to IKEC's objection at [R. 442] and LG&E/KU's objection at [R. 448], Creditor Frontier-Kempter Constructors, Inc. filed an objection at [R. 446], the Official Committee of Unsecured Creditors ("**Committee**") objected at [R. 447], Creditor Fricke Management & Contracting, Inc. filed an objection at [R. 449]. Despite its limited objection, the Committee has since reached a settlement agreement with Debtors and Tribeca that would resolve their objections, were the Court to approve the APA. *See* [R. 517].

and 448], and objections to Tribeca's ability to credit bid a portion of its secured debt. [Rs. 446 and 449].

LG&E specifically objects that the terms of its Supply Contract with Hartshorne expressly requires that all coal not only meet certain quality specifications, but that all coal be sourced at a specific property – Hartshorne's Poplar Grove mine at the Kentucky #9 seam – and delivered at the Buck Creek loading dock. LG&E contends that, since Tribeca would not be purchasing the underlying mine, Tribeca literally cannot perform the contract as written. LG&E and KU add that Debtors are clearly in default under the LG&E Supply Contract because the operational mine has closed. Because of the closure, they cannot cure this default. For these reasons, LG&E and KU argue that Debtors and Tribeca have not provided the necessary evidence of adequate assurance of future performance as required for assignment under Section 365(f).

IKEC likewise objects that the only approved source of coal under its own Fuel Purchase Agreement with Hartshorne is Seller's Poplar Grove mine, and because the proposed assignment and sale to Tribeca does not include any of Debtors' coal inventory or real property, the adequate assurance of future performance of Section 365 cannot be met: "It is impossible for Tribeca to perform under the terms of the Fuel Purchase Agreement in the absence of IKEC's agreement to amend the approved Source." [R. 442 at 6-7]. Frontier-Kemper Constructors, Inc. similarly objects that the APA merely "allow[s] the Tribeca Secured Parties to 'cherry-pick' the assets it believes it can monetize and to render the rest of the estate administratively insolvent." [R. 446 at 1]. Fricke Management and Contracting, Inc. has also objected to the change in source location: "the Supply Contract must be fulfilled from the mine of the Debtors. The Debtor would not have been able to obtain the Supply Contracts without the mine, and now Tribeca seeks to leave the mine without the Supply Contracts." [R. 449 at 5].

From July 21 through July 23, 2020, the Court held a hearing on the underlying objections to the sale and assignment of the Supply Contracts ("**Sale Hearing**"), at which time the Court heard testimony from witnesses on the objections to the APA. The Court heard from Hartshorne's president David Gay, Amy Jeffries for American Electric Power (who negotiates supply agreements on behalf of IKEC), and investment banker John Messina of Perella Weinberg Partners, which was the bank Hartshorne engaged to try to sell the company. Debtors' witnesses generally testified as to the benefits of assignment and argued that the source provision was less material than the coal price, the true bottom line underlying the Supply Contracts. Hayden Smith, Tribeca's managing director, and Peter Bradley, CEO of Javelin Global Commodities Limited (one of the tentative coal brokers proposed by Debtors and Tribeca), testified as to Tribeca's brokers' ability to supply substitute coal within the required specifications. LG&E's witness, Caryl Pfeiffer, testified as to the Utilities' processing methods and the sheer importance and irreplaceability of the source provision. *See generally* July 21-23, 2020 Transcripts, [Rs. 540-542]. At the conclusion of the Sale Hearing, the Court took the matter under submission and required no further briefing from the parties.

STANDARD OF REVIEW

When an asset sale is effectuated in bankruptcy, Section 365(f) of the Bankruptcy Code allows the debtor-in-possession to assume and assign an executory contract, but only if "adequate assurance of future performance by the assignee of such contract or lease" is provided. 11 U.S.C. § 365(f)(2). This is true regardless of "whether or not there has been a default in such contract or lease." 11 U.S.C. § 365(f)(2)(B). "Adequate assurance of future performance by the assignee" is mandatory, so that a debtor-in-possession may only assign an executory contract or unexpired lease if "(A) the trustee [or debtor-in-possession] assumes such contract or lease in accordance with the provisions of this section; and (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease." 11 U.S.C. § 365(f)(2)(A)-(B). Adequate assurance of future performance is also required in the event of default. Section 365(b)(1) of the Bankruptcy Code provides as follows:

> If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—
>
> (A) cures, or provides adequate assurance that the trustee will promptly cure, such default.
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1)(C); *see also In re AppleIllinois, L.L.C.*, 2014 Bankr. LEXIS 317, *7 (Bankr. E.D. Ky. Jan. 24, 2014) (citing provisions of Section 365(b)(1)(A)-(C)).

Section 365 of the Bankruptcy Code, in addition to limiting assignability by requiring assurance of future performance from the assignee, also requires that when a debtor assumes and assigns a contract, the express terms cannot be modified. *In re Fleming Cos.*, No. 03-10945 (MFW), 2004 Bankr. LEXIS 198 (Bankr. D. Del. Feb. 27, 2004), citing *Cinicola v. Scharffenberger*, 248 F.3d 110, 119-20 (3d Cir. 2001). "An assignment does not modify the terms of the underlying contract," but "is a separate agreement between the assignor and the assignee which merely transfers the assignor's contract rights, leaving them in full force and effect as to the party changed." *Medtronic Ave., Inc. v. Advanced Cardiovascular Sys., Inc.*, 247 F.3d 44, 60 (3d Cir. 2001). An assignment is "intended to change only who performs an obligation, not the obligation to be performed." *Id.*; *see also In re Morande Enters.*, 335 B.R. 188, 190-193 (Bankr. M.D. Fla. 2005) (debtor allowed to assign dealer agreement but had to do so in toto, including the provision restricting operation to an exclusive location and requiring consent to relocate). Section 365(f), then, requires the debtor to assume a contract subject to all the benefits and burdens thereunder, or, "assume the contract *cum onere* without any change." *In re ANC Rental Corp.*, 277 B.R. 226, 238 (Bankr. D. Del. 2002). The debtor "may not blow hot and cold," and if he accepts the contract "he accepts it *cum onere*," so "[i]f he receives the benefits he must adopt the burdens. He cannot accept one and reject the other." *In re Italian Cook Oil Corp.*, 190 F.2d 994, 997 (3d Cir. 1951); *see also City of Covington v. Covington Landing L.P.*, 71 F.3d 1221, 1226 (6th Cir. 1995) (neither debtor nor court has authority to modify the material terms of a lease assigned).

Here, Debtors bear the burden of proving that the assignee can in fact perform the contract in accordance with all existing terms, and that the contract will be assumed without any material change. *Ill. Inv. Trust No. 92-7163 v. Allied Waste Indus.* (*In re Res. Tech. Corp.*), 624 F.3d 376, 384 (7th Cir. 2010) ("[T]he party seeking to become the assignee . . . ha[s] the burden of proving it met the requirements of § 365(f)."); see also *In re Akron Thermal*, Case No. 07-51884, 2009 Bankr. LEXIS 5780, at *33 (Bankr. N.D. Ohio Jan. 26, 2009) (the debtor or party moving to assume a lease under 11 U.S.C.S. § 365(a) bears the ultimate burden of proof).

DISCUSSION

The Court finds that, based on the testimony and evidence presented, the source provision in both Supply Contracts is a material term that cannot be excised over the Utilities' objections or otherwise nullified as an anti-assignment provision. The undisputed evidence establishes that the exclusive coal supply source for which LG&E/KU and IKEC originally contracted – the Buck Creek mine complex at the Kentucky #9 seam – is unable to be used. Coal cannot be sourced from that location nor delivered to the delivery barge point on the Green River. While the Supply Contracts clearly allow for "Substitute Coal," the Buyer must consent to the change. Here, the Utilities remain adamant that knowing where precisely the coal will come from, and who will be supplying it, are details as critical as the coal specifications themselves.

As noted by the parties' objections, little to no financial or other adequate assurance information regarding the mystery supplier and/or source has been provided in the APA and Sale Notice. Beyond Hartshorne's informally identifying a handful of major coal suppliers that Debtors allege would be able to provide substitute coal in satisfaction of all required specs, Debtors and Tribeca have thus far failed to pinpoint the source of these shipments and failed to identify what entity would be sourcing and shipping the coal. Without certainty or control over source and broker, the Court agrees that assignment would leave the Utilities without "adequate assurance of future performance under such contract" as required by 11 U.S.C. § 365. Although the APA will be rejected on that basis, the Court leaves open the possibility that Debtors and Tribeca may still be able to identify a specific supplier and source so that the APA and Sale Notice can be amended accordingly.

A. Debtors and Tribeca Have Not Provided Adequate Assurance of Future Performance Regarding the Substitute Coal Source and Supplier.

The Court's primary concern with the assignment is not whether the contracts are assignable – the terms expressly state that they are – but rather, the assignee's ability to provide any real certainty as to where future coal shipments will actually come from if the Supply Contracts are assigned to Tribeca, and, who will actually be supplying the coal. Tribeca claims it can cure any default and provide adequate assurance: "Tribeca Entities are, therefore, prepared both to cure the existing shortage in the annual Base Quantity by year-end and to provide adequate assurance of the delivery of coal over the entire term of the Agreement." [R. 452 at 12]. Due to the impossibility of supplying coal from the Kentucky #9 seam, though, and the fact that Tribeca cannot provide greater specificity beyond large-scale providers such as Javelin or AMCI, who upon receiving the contracts would undoubtedly outsource orders to other own downstream intermediaries, the Court finds "adequate assurance of future performance" as required under Section 365(f) to be lacking.

Tribeca argues that money is the primary consideration when the reaching these agreements, and "the principal material term of the contract are the coal specs and the coal quantities." 7/21 Trans., [R. 539 at 10]. Tribeca, however, also does not dispute that both the LG&E and IKEC Supply Contracts specify that all coal supplied must originate from a specific Illinois Basin Coal seam, the Kentucky Seam #9, at Debtors' Buck Creek mines in McLean and Hopkins Counties. [R. 452 at 8]. While the Supply Contracts do contemplate circumstances where "Substitute Coal" may be used, the buyer's express consent is clearly required, and the overall absence of specificity as to the source and supplier of substitute coal is problematic. The

Court heard lengthy testimony at the Sale Hearing as to the importance and materiality of the source provision–that is, of knowing the specific hole in the ground where the buyer's coal was mined. *See, e.g.*, Jeffries testimony, 7/21 Trans., [R. 539 at 173] ("I would say [source] is material to IKEC"). LG&E notes that this sourcing requirement is mentioned numerous times throughout the LG&E Supply Contract. Though Debtors and Tribeca stressed that any substitute coal provided post-assignment would satisfy the specs, testimony at the Sale Hearing established that, when LG&E is negotiating a supply contract for coal, bidders are not even initially approved until the coal specifications are presented and approved. Pfeiffer testimony, 7/22 Trans., [R. 540 at 156-160]. In other words, the specs are but the first step in negotiations, not the final determinative factor.

In addition to uncertainties regarding source, there are uncertainties regarding supplier. At the Sale Hearing, when the Court asked whether Tribeca would be acting as a broker to find coal that would satisfy the Utilities' specs requirements, Tribeca explained it has entered into a term sheet with two separate coal brokers, the largest brokers in the world, Javelin Commodities and AMCI.[6] These suggested brokers are major players in the industry, and the Court has no concerns regarding their ability to find and sell coal. The likelihood remains high that these major brokers would further assign the Supply Contracts to downstream entities, entities that have no prior relationship with LG&E, KU or IKEC, no special familiarity with the Buck Creek mine complex or its specific coal attributes, and no motivation to foster and develop a reliable, long-term sales agreement without regularly outsourcing to additional mystery middlemen.

[6] Javelin Global Commodities (UK), Ltd is a coal-focused global commodities trading, logistics, operations and investment company with offices in London, Singapore and the United States, and currently represents 50% of all US thermal exports, [R. 452 at 10], while AMCI is a natural resources specialist investor focused on the global mining sector across 20 plus countries, with 8,000 employees and 300 plus customers. 7/21 Trans., [R. 539 at 9-11].

This is precisely the outcome the Utilities wish to avoid; they did not merely contract for coal specifications but for knowledge as to where the coal was coming from, and who was mining it. LG&E's witness testified as to the difficulties with a "moving target" downstream coal supplier that constantly remains in flux: "if that party keeps changing, you have to keep kind of chasing the specs to match the new party. We actually have to write -- for every change in source and the quality, we have to create a new database." 7/23 Trans., [R. 541 at 40]. Testimony at the Sale Hearing underscored the fact that the Utilities' relationships with their suppliers are tantamount to the long-term success of these supply agreements. For example, the Court heard testimony that Alliance, another major coal supplier with whom LG&E has dealt in the past, was potentially interested in acquiring the Supply Contracts but "did not want to do anything to jeopardize the ongoing relationship with LG&E." 7/22 Trans., [R. 540 at 23-24]. This testimony shows that long-term relationships with suppliers is material and beneficial to the Utilities, and there are greater considerations underlying these supply contract negotiations than merely the specs themselves.

Likewise, LG&E's witness testified that part of the appeal of its Supply Contract with Hartshorne was the diversity of supply that would result from the opening of the new Buck Creek No. 1 mine. When that opening never occurred, LG&E lost yet another benefit of its bargain with Debtors: a broader diversity of supply and control over that diversity. While Tribeca would technically be expanding LG&E's sources via another (unidentified) downstream supplier, such forced diversification at the expense of LG&E's control is not a fair result. The Utilities never bargained for anything short of control over the specific mine source, and despite subsequently amendments to the Supply Contracts, LG&E never lost its contractual right to have a new mine source and new producer. 7/21 Trans., [R. 539 at 123]. Under the APA and Sale Notice, the Utilities would indeed lose control over source and supplier and would be at the mercy of Javelin or AMCI's suppliers with whom they presumably have no prior relationships and no probability of long-term growth before the contract gets re-assigned once again.

In short, testimony at the Sale Hearing established that, while Debtors and Tribeca seek to assure that any substitute coal they provide under the assigned contract would meet the contracted-for specs, contract specifications are tied to the geographical seam. [R. 541 at 51-52] (LG&E's witness explaining that Javelin's substitute coal is "not going to have the quality specifications that relate to the Number 9 seam at Poplar Grove mine."). When in entering into coal supply agreements, LG&E and KU carefully consider factors including the specific coal source as well as prior experience burning such coal, identity of the producer, the geographic location, and delivery points. These provisions are critical to the bargain agreed upon by the parties and should not be removed over the Utilities' objection.

B. Witness Testimony Established the Materiality of the Source Provision.

Debtors and Tribeca argue that there is "no economic significance to the source provision," which is "essentially a disguised anti-assignment provision, prohibited by § 365." [R. 452 at 16], citing *In Re Rickel Home Ctrs.*, 240 B.R. 826 (D. Del 1999), but the testimony presented at the evidentiary hearing suggests otherwise. Based on the detailed testimony presented at the Sale Hearing, however, the source provision is anything but trivial.

LG&E's witness Caryl Pfeiffer testified as to LG&E's coal procurement process, a very sophisticated process "based on the holistic portfolio of all their contracts." 7/30 Trans., [R. 539 at 11]. Mrs. Pfeiffer went on to testify as to the unique properties of a coal seam and how, even within a single seam, coal quality can vary: "you could take sources in the same seam, and the qualities, even within that same seam, could be different." [R. 541 at 4-5].

Debtors and Tribeca argued that a substitution or change to the coal source provision is extremely commonplace among the Utilities' other supply contracts. Regarding IKEC, for example, Debtors and Tribeca alleged that "in every single instance where a coal supplier asked them to change the sourcing provision to identify a new source, [IKEC] did it every time. The sourcing provision isn't important . . . [the Utilities will] have the same specs. They'll get the same quantities. They'll be able to operate their power plants just like they were prior to the sale. It's just not coming from the same mine. And in the end, that's not a material provision of the contract." [R. 539 at 18, 20].

Testimony from the Utilities, however, established that, when such substitutions were permitted, the source *was* known. When LG&E agreed to the amendment changing the source from the Cypress mine to the Poplar Level mine, they "agreed to it because the quality for the move from Cypress to Poplar Level Mine was the same quality that we had in the bid sheets." 7/23 Trans., [R. 541 at 19-20]. So when LG&E did permit a mine substitution in the past, it was "because all of [the] mines were under the control of the person asking for the substitution," and they "provided the associated quality data so we can ensure [LG&E] could burn it in our boilers." 7/23 Trans., [R. 541 at 68]. IKEC also testified that substitutions were only ever permitted when "it was a supplier that we were familiar with." 7/21 Trans., [R. 539 at 174].

LG&E's witness testified that seam location is directly tied to coal specs and that some familiarity with the actual location is needed to understand fully the specs listed on the product when shipments are received:

> Q Okay. So that if Javelin was able to source coal that met the specifications and quality of that coal that is in the combined pile, that would satisfy the quantity -- or the quality requirements.
> A *Not if I don't know the original source of the coal.*
> Q But if you --
> A What mine it came from.
> Q If you knew that, if you knew which mine it came from, and you had some history with that mine, and you do your testing when it arrives, and it meets the quality of the -- I'm going to call it the big coal pile -- and I just -- the combined coal pile -- let's call it the combined coal pile -- it would satisfy that requirement.
> A No. It would not, *because when we buy coals to commingle in that pile, we have had the opportunity to look at the quality of that seam and all the other parameters that come in in a bid document, to make that decision ourselves that we can burn it in our units.*

[*Id.* at 62-63] (emphasis added).

The Utilities' knowing the actual mine location, and having some relationship with the supplier, is integral to the success of their agreements. Any time a substitution was permitted in the past, more information was available as to both source and supplier:

> Q All right. And in all of the substitutions that you agreed to, did you know where the coal was going to come from after the substitution?
> A Yes.
> Q You knew the mine and the seam?
> A Yes.
> Q And you knew the producer?
> A Yes.
> Q Has anybody ever asked you to approve a substitution from unnamed sources or producers?
> A No.
> Q How far would that get?
> A It wouldn't get anywhere.
> Q And they don't ask because they know it wouldn't get anywhere.
> A Correct.
> Q You referred earlier to the coal that may be supplied after assignment, but is it correct you mean that's what they proposed, not what you agreed to?
> A Correct. We would have no control in making the decision what is to be supplied.
> Q And in terms of whether you'd actually get any new sources supplied by Javelin, you just haven't heard any sources, correct?

A Correct.

7/23 Trans., [R. 541 at 78]. LG&E's reply emphasizes the materiality of source: "KU and LG&E have never allowed the Debtors to ignore the sourcing provision of the Supply Contract. The fact that the parties amended the Supply Contract, in writing, to account for a slight expansion of the sourcing provision, in the same mine complex, and LG&E and KU got a price reduction for that, is ample evidence of the provision's importance to the agreement. If the sourcing provision were not material, then the Debtors would have simply delivered the coal from the expanded source without needing to amend the contract or reduce the price to do so." [R. 468 at 24].

Tribeca insists that disregarding the source will have no impact on LG&E, KU, or their ratepayers, [R. 452 at 14], but based on the witness testimony, the lack of certainty regarding the origins of the coal, moving forward, *will* impact LG&E, KU, and IKEC. Javelin, Tribeca's suggested broker, currently has no coal properties under their control and is unable to provide any real assurances as to mine or seam location in that regard. Based on the testimony heard by the Court, without knowing where the future source would be and with what entity they will be dealing, the Utilities cannot be assured the same quality for which they contracted.

C. The Analogous *Fleming* Case Supports Rejecting Assumption and Assignment.

Aside from the persuasive testimony and evidence presented at the Sale Hearing, the applicable case law also generally supports rejecting assignment in these circumstances. Both parties cite to a case with parallel facts: *In re Fleming Cos.*, 499 F.3d 300 (3d Cir. 2007). In *Fleming*, the terms of a grocery distribution agreement provided that all groceries were to be distributed to the buyer grocer chain from a particular warehouse in Tulsa. When the distributor filed bankruptcy, the assignee wanted to take assignment of that distribution contract, suggesting it could supply groceries from a different warehouse, and the counterparty to the agreement objected. The Third Circuit rejected the assignment, finding that the specific Tulsa warehouse was a material term to the objecting non-debtor counterparty and affirmed the bankruptcy court's denial of the appellant-grocer's motion for assumption and assignment of an executory contract in favor of the non-debtor contracting party.

The Utilities now cite *Fleming* for the proposition that an assumption and assignment may not vary the terms of an executory contract absent the non-debtor counterparty's consent. In seeking to distinguish *Fleming*, Tribeca argues that "the Tulsa facility . . . was an integral part of the overall sale and consummation and the food supply," and "part of the overall, bargained for sale transaction, not merely one term in a stand-alone food supply agreement." [R. 452 at 15] (citing *Fleming* at 303-304). Tribeca seeks to cast the coal source provisions as one stand-alone term in a coal supply contract, arguing that LG&E and KU received no real benefits from the source provision. The Court ultimately agrees with LG&E that the Utilities actually received numerous intangible benefits from their ability to control the source, including "geographic diversity, producer diversity, quality control, enhanced supplier competition, and supplier working relationships from its contract as written," [R. 468 at 25-26], the same intangibles the *Fleming* court recognized in rejecting assignment.

Though Tribeca finds *Fleming* distinguishable from the present facts, the Court does not. On the contrary, LG&E/KU and IKEC also bargained for a specific coal seam, an "integral part of the overall sale," and "not merely one term" in the agreement where the source provision is included in every contract the Utilities sign. Applying *Fleming* to the present facts, Tribeca cannot force the Utilities to accept coal from other sources, even if such coal meets the technical agreed-upon specifications and even if all additional transportation costs are borne by Tribeca. Here, just like in *Fleming*, the proposed assignee wants the contract but instead of opting to purchase the source itself, wants to provide alternate sourcing which it assures is equal in quality. Just like in *Fleming*, however, the objecting counterparties (the Utilities) specifically negotiated that source term and benefitted from that source, including the staff with whom they worked, the continuity and predictability of repeated testing and reporting, and other intangible factors. Just as the *Fleming* court valued these intangible-yet-material benefits as part of the bargain, so does this Court.

Notably, no party has identified any case in which a bankruptcy court held that a coal source provision would be modified or excised to permit an assignment; LG&E stressed during the Sale Hearing that "absolutely every [supply contract] that LG&E enters into has a source provision for a specific geographic location, a specific seam, and not just a specific seam but a specific spot on that seam." 7/ 21 Trans., [R. 539 at 22-23].

As stated above, contracts and unexpired leases must be assumed in their entirety, with all their benefits and all their burdens. *In re J. Peterman Co.,* 232 B.R. 366, 369 (Bankr. E.D. Ky. 1999). While Section 365(f)(1) does give the Court broad equitable power to excise "anti-assignment" provisions from those contracts and leases if their construction "restricts or conditions the assignment," *In re Mr. Grocer, Inc.*, 77 B.R. 349, 354 (Bankr. D.N.H. 1987), the Court will not opt to treat the source provision as such here. Although Debtors argue that the source provisions "are impermissible anti-assignment provisions which are disregarded under Section 365(f)," and "must be excised for the benefit of the estates," [R. 454 at 4], this Court disagrees, finding no precedent for ignoring the coal source terms over the Utilities' objections, or treating them as anything other than material terms for which the Utilities specifically bargained.

CONCLUSION

Debtors and Tribeca argued that coal price was the bottom-line consideration when negotiating the underlying Supply Contracts with the Utilities, and at the end of the day, coal is coal. Based on the testimony, though, the Court finds that all coal – even coal with the same specifications – is not equal. Under the APA and Sale Notice, the substitute coal source will not be going to be a particular identified producer, but rather, will be brokered out to one more major middleman suppliers, thus become a moving target for the Utilities. The Court does not doubt that Tribeca's major broker(s) are reputable, but fears that assignment will result in a string of suppliers with no direct relationship with the Utilities, no history of rapport or good will with the Utilities, and no real incentive to foster such relationships moving forward. Without more specificity and permanence as to both source and supplier, Debtors and Tribeca cannot provide adequate assurances to assuage the Utilities' very real concerns. Debtors insist that, in the event assignment is permitted, the Utilities "will know the source," [R. 541 at 170], but until they actually *know* the source, this Court is not comfortable being the first bankruptcy court on record to write off a coal source provision as an immaterial anti-assignment term, and permit assignment of coal supply contracts over the buyers' objections to unknown third party brokers and vendors. Having considered the matter fully, and being otherwise sufficiently advised,

IT IS HEREIN ORDERED that the objections to Hartshorne's Asset Purchase Agreement and Sale Notice, including but not limited to the proposed assignment of the LG&E

Supply Contract and the IKEC Supply Contract therein, are SUSTAINED, and the proposed Asset Purchase Agreement is DENIED.

Thomas H. Fulton
United States Bankruptcy Judge

Dated: August 14, 2020

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information
Dated August 19, 2020

Case No. 2020-00248

Question No. 11

Responding Witness: Delbert Billiter / Charles R. Schram

Q-11.

a. For the period under review, state whether there have been any changes to LG&E's written policies and procedures regarding its fuel procurement. If yes:

   (1) Describe the changes;

   (2) Provide the written policies and procedures as changed;

   (3) State the date(s) the changes were made; and

   (4) Explain why the changes were made.

b. If no, provide the date LG&E's current fuel procurement policies and procedures were last changed, provide the date when they were last provided to the Commission, and identify the proceeding in which they were provided.

A-11. a-b.

During the period under review, there were no changes to The Corporate Fuels and By-Products Procurement Procedures for coal. The Corporate Fuels and By-Products Procurement Procedures were last updated April 1, 2017 and were provided to the Commission in Case No. 2017-00285 in response to Question No. 1-15.

The Power Supply Commodity Policy – Natural Gas Fuel for Generation was last updated January 1, 2020 and is provided as an attachment to this response. The modifications included updating approvers and titles to reflect organizational changes, updating the name of the Company's Technology Support Center, and clarifying requirements surrounding the issuance and response to an RFP to allow for email or physical correspondence.

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information
Dated August 19, 2020

Case No. 2020-00248

Question No. 12

Responding Witness: Stuart Wilson

Q-12. For the period under review, list all firm power commitments for (a) purchases and (b) sales. This list shall identify the electric utility, the amount of commitment in megawatts, and the purpose of the commitment (i.e., peaking, emergency).

A-12. a. Firm Purchases

The firm purchases from Ohio Valley Electric Corporation (OVEC) for the review period are shown in the table below. LG&E purchased its participation ratio (5.63%) of the OVEC released capacity for the months in question:

Utility	Companies' Amt (MW)	LG&E Portion (MW)	Purpose
OVEC (Nov 2019)	~ 160	~ 110	Baseload
OVEC (Dec 2019)	~ 168	~ 116	Baseload
OVEC (Jan 2020)	~ 168	~ 116	Baseload
OVEC (Feb 2020)	~ 168	~ 116	Baseload
OVEC (Mar 2020)	~ 97	~ 67	Baseload
OVEC (Apr 2020)	~ 84	~ 58	Baseload

b. Sales - NONE

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information
Dated August 19, 2020

Case No. 2020-00248

Question No. 13

Responding Witness: Andrea M. Fackler

Q-13. Provide a monthly billing summary of sales to all electric utilities for the period under review.

A-13. See Page 2, Sheet 1 of 3 of the November 2019 through April 2020 monthly Form B filings that were previously filed with the Commission.

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information
Dated August 19, 2020

Case No. 2020-00248

Question No. 14

Responding Witness: Andrea M. Fackler

Q-14. Describe the effect on the FAC calculation of line losses related to:

a. Intersystem sales when using a third-party transmission system and

b. Intersystem sales when not using a third-party transmission system.

A-14. Line losses related to inter-system sales are calculated using a loss factor of 0.5% whether the inter-system sale requires a third-party transmission system or not. This practice is consistent with the Commission's June 7, 2013 Amended Order in Case No. 2012-00553[1].

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[1]*Electronic Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company From November 1, 2010 Through October 31, 2012, Kentucky Public Service Commission, Case No. 2012-00553,* filed February 13, 2013, Amended Order June 7, 2013

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information
Dated August 19, 2020

Case No. 2020-00248

Question No. 15

Responding Witness: Michael P. Drake

Q-15. Provide a list, in chronological order, showing by unit any scheduled, actual, and forced outages for the period under review.

A-15. See attached.

Louisville Gas & Electric Company
November 2019 through April 2020

Unit and Outage Type		Scheduled		Actual*		HOURS OF DURATION		REASON FOR DEVIATION FROM SCHEDULED MAINTENANCE
(F=Forced; S=Scheduled)		FROM	TO	FROM	TO	Scheduled	Actual*	OR REASON FOR FORCED OUTAGE AS APPROPRIATE
Mill Creek Unit 1 - Coal - 300 MW	S	11/25/2019 16:32	11/29/2019 10:32	11/25/2019 16:32	11/29/2019 10:32	90:00	90:00	Air heater wash
In-service August 1972	S	12/28/2019 18:00	12/30/2019 4:02	12/28/2019 18:00	12/30/2019 4:02	34:02	34:02	Steam Condenser Cleaning
	F			1/25/2020 19:58	1/26/2020 2:52		6:54	Turbine Crossover Piping Steam Leak
	F			3/17/2020 2:21	3/17/2020 16:29		14:08	Boiler circulating water pump (BCWP) failure
	S	3/25/2020 12:51	3/31/2020 4:51	3/25/2020 12:51	3/31/2020 4:51	136:00	136:00	Boiler Circulating Water Pump Replacement
Mill Creek Unit 2 - Coal - 295 MW	S	11/29/2019 12:42	12/1/2019 0:00	11/29/2019 12:42	12/1/2019 0:00	35:18	35:18	Air heater wash
In-service July 1974	S	12/1/2019 0:00	12/2/2019 12:45	12/1/2019 0:00	12/2/2019 12:45	36:45	36:45	Air heater wash
	F			12/18/2019 21:54	12/21/2019 5:06		55:12	Boiler waterwall tube leak
	S	4/3/2020 22:20	4/7/2020 6:00	4/3/2020 22:20	4/7/2020 6:00	79:40	79:40	Air heater wash
Mill Creek Unit 3 - Coal - 394 MW	S	10/5/2019 0:00	12/8/2019 23:59	10/3/2019 23:10	12/6/2019 20:07	1559:59	1532:57	Major turbine overhaul
In-service August 1978	F			12/6/2019 20:17	12/7/2019 9:50		13:33	Turbine Vibration
	F			12/8/2019 19:13	12/9/2019 7:22		12:09	Turbine Vibration
	F			12/9/2019 23:54	12/10/2019 9:21		9:27	Turbine Vibration
	S	12/12/2019 21:37	1/1/2020 0:00	12/12/2019 21:37	1/1/2020 0:00	458:23	458:23	Turbine Vibration
	S	1/1/2020 0:00	1/5/2020 2:19	1/1/2020 0:00	1/5/2020 2:19	98:19	98:19	Turbine Vibration
	S	1/6/2020 17:50	1/8/2020 4:37	1/6/2020 17:50	1/8/2020 4:37	34:47	34:47	Turbine Vibration
	S	1/14/2020 7:56	1/28/2020 0:32	1/14/2020 7:56	1/28/2020 0:32	328:36	328:36	Turbine Vibration
	S	3/2/2020 12:30	3/6/2020 5:27	3/2/2020 12:30	3/6/2020 5:27	88:57	88:57	Turbine Vibration and Alignmnet
Mill Creek Unit 4 - Coal - 486 MW	S	3/8/2020 11:08	3/8/2020 23:41	3/8/2020 11:08	3/8/2020 23:41	12:33	12:33	Generator Protection System
In-service September 1982	S	4/13/2020 6:00	4/17/2020 6:00	4/13/2020 6:00	4/17/2020 6:00	96:00	96:00	Burners
	S	4/20/2020 6:01	4/24/2020 7:30	4/20/2020 6:01	4/24/2020 7:30	97:29	97:29	Duct Expansion Joint Repair
Trimble County Unit 1 - Coal - 370 MW	S	10/12/2019 0:00	11/10/2019 23:59	10/11/2019 21:30	11/11/2019 0:00	719:59	722:30	Planned outage - boiler, air heater, SCR, SDRS maintenance
In-service December 1990	S	11/11/2019 0:00	11/17/2019 4:10	11/11/2019 0:00	11/17/2019 4:10	148:10	148:10	Extension of planned outage for boiler maintenance
75% ownership share of 511 MW	S	11/21/2019 12:51	11/23/2019 22:53	11/21/2019 12:51	11/23/2019 22:53	58:02	58:02	Condenser tube leak
	F			11/24/2019 10:03	11/25/2019 7:40		21:37	Boiler Superheater Tube Leak
	S	11/25/2019 7:40	11/26/2019 20:18	11/25/2019 7:40	11/26/2019 20:18	36:38	36:38	Boiler Superheater Tube Leak
	F			12/18/2019 12:36	12/18/2019 22:18		9:42	Generator protection relay equipment failure
Trimble County Unit 2 - Coal - 570 MW	F			1/29/2020 1:14	1/30/2020 2:14		25:00	Boiler Piping Leak
In-service January 2011	S	1/30/2020 2:14	2/1/2020 14:13	1/30/2020 2:14	2/1/2020 14:13	59:59	59:59	Boiler waterwall tube leak repair
75% ownership share of 732 MW jointly owned with KU								
Cane Run Unit 7 - Gas - 683 MW	S	12/7/2019 0:00	12/15/2019 0:00	12/6/2019 23:45	12/15/2019 16:02	192:00	208:17	Borescope inspection
In-service June 2015	S	2/22/2020 0:00	3/30/2020 12:00	2/21/2020 23:08	3/30/2020 0:00	900:00	888:52	Hot gas path inspection
Jointly owned with KU	S	3/30/2020 0:00	4/3/2020 12:19	3/30/2020 0:00	4/3/2020 12:19	108:19	108:19	Hot gas path inspection
	F			4/3/2020 16:06	4/4/2020 0:35		8:29	Fuel piping and valves
	S	4/24/2020 23:00	4/29/2020 22:53	4/24/2020 23:00	4/29/2020 22:53	119:53	119:53	Valve maintenance
E. W. Brown Unit 5 - Gas CT - 130 MW	F			2/14/2020 8:13	2/14/2020 14:17		6:04	Cooling water system
In-service June 2001	F			3/10/2020 17:58	3/11/2020 16:24		22:26	Ignition system
Jointly owned with KU	S	3/20/2020 7:05	3/20/2020 13:47	3/20/2020 7:05	3/20/2020 13:47	6:42	6:42	Annual calibration of gas flow meter

*Actual outage dates and hours of duration include scheduled and forced outages.

Unit and Outage Type (F=Forced; S=Scheduled)		Scheduled FROM	Scheduled TO	Actual* FROM	Actual* TO	HOURS OF DURATION Scheduled	HOURS OF DURATION Actual*	REASON FOR DEVIATION FROM SCHEDULED MAINTENANCE OR REASON FOR FORCED OUTAGE AS APPROPRIATE
E. W. Brown Unit 6 - Gas CT - 171 MW	S	12/6/2019 7:52	12/6/2019 17:50	12/6/2019 7:52	12/6/2019 17:50	9:58	9:58	Cooling and seal air system
In-service August 1999	F			4/3/2020 1:22	4/8/2020 20:30		139:08	Rotor barring system
Jointly owned with KU	S	4/13/2020 6:35	4/16/2020 9:25	4/13/2020 6:35	4/16/2020 9:25	74:50	74:50	Combustion Turbine Generator Bearing Vibration
	S	4/23/2020 6:46	4/23/2020 14:44	4/23/2020 6:46	4/23/2020 14:44	7:58	7:58	Purge valve actuator repair
E. W. Brown Unit 7 - Gas CT - 171 MW								
In-service August 1999	No outages > or = 6 hours							
Jointly owned with KU								
Cane Run Unit 11 - Gas CT - 14 MW				10/3/2019 15:00	12/1/2019 0:00		1401:00	Unit was mothballed 10/3/2019, retired 12/1/2019
In-service June 1968								
Paddys Run Unit 11 - Gas CT - 13 MW	S	3/3/2020 7:33	3/3/2020 14:19	3/3/2020 7:33	3/3/2020 14:19	6:46	6:46	Starting (Diesel) System Maintenance
In-service June 1968	F			3/3/2020 14:19	3/9/2020 10:43		140:24	Starting (Diesel) System batteries
	S	3/23/2020 9:00	3/24/2020 13:00	3/23/2020 9:00	3/24/2020 13:00	28:00	28:00	Starting (Diesel) System batteries
	F			4/21/2020 8:00	4/23/2020 14:42		54:42	Starting Diesel Breaker Trip
Paddys Run Unit 12 - Gas CT - 28 MW	S	2/25/2020 7:36	2/26/2020 17:00	2/25/2020 7:36	2/26/2020 17:00	33:24	33:24	Starting Diesel System Maintenance
In-service July 1968	S	2/26/2020 17:00	2/27/2020 14:30	2/26/2020 17:00	2/27/2020 14:30	21:30	21:30	Starting (Diesel) System Maintenance
Paddys Run Unit 13 - Gas CT - 175 MW	F			11/8/2019 4:28	11/8/2019 12:15		7:47	Compressor blowoff valve repair
In-service June 2001	S	11/30/2019 0:00	12/8/2019 0:00	11/27/2019 6:44	12/6/2019 9:36	192:00	218:52	Control System Upgrade
Jointly owned with LG&EKU	S	2/11/2020 7:41	2/11/2020 15:22	2/11/2020 7:41	2/11/2020 15:22	7:41	7:41	Fuel Gas System - Flow Meter
	S	4/16/2020 6:00	4/16/2020 13:34	4/16/2020 6:00	4/16/2020 13:34	7:34	7:34	Fuel Gas System - Instrumentation
Trimble County Unit 5 - Gas CT - 179 MW	F			12/5/2019 19:07	12/7/2019 17:06		45:59	Turning gear failed to start
In-service May 2002	S	2/3/2020 0:01	2/5/2020 17:42	2/3/2020 0:01	2/5/2020 17:42	65:41	65:41	Hydrogen seal oil leaks
Jointly owned with KU	S	4/23/2020 5:30	4/23/2020 12:05	4/23/2020 5:30	4/23/2020 12:05	6:35	6:35	Hydraulic oil system maintenance
Trimble County Unit 6 - Gas CT - 179 MW	F			12/2/2019 5:57	12/2/2019 14:19		8:22	Inlet guide vane not tracking
In-service May 2002								
Jointly owned with KU								
Trimble County Unit 7 - Gas CT - 179 MW	S	12/3/2019 6:29	12/5/2019 21:19	12/3/2019 6:29	12/5/2019 21:19	62:50	62:50	Starting System - Load Commutated Inverter
In-service June 2004	S	2/22/2020 15:51	2/22/2020 21:53	2/22/2020 15:51	2/22/2020 21:53	6:02	6:02	Starting System - Load Commutated Inverter
Jointly owned with KU								
Trimble County Unit 8 - Gas CT - 179 MW	S	12/4/2019 6:30	12/5/2019 21:51	12/4/2019 6:30	12/5/2019 21:51	39:21	39:21	Starting System - Load Commutated Inverter
In-service June 2004	S	2/22/2020 15:51	2/22/2020 21:53	2/22/2020 15:51	2/22/2020 21:53	6:02	6:02	Starting System - Load Commutated Inverter
Jointly owned with KU								
Trimble County Unit 9 - Gas CT - 179 MW	S	11/23/2019 0:00	12/8/2019 0:00	11/20/2019 20:00	12/3/2019 19:39	360:00	311:39	Exciter controls
In-service July 2004	S	12/3/2019 20:23	12/6/2019 21:58	12/3/2019 20:23	12/6/2019 21:58	73:35	73:35	Starting System - Static Start Switch
Jointly owned with KU	S	4/6/2020 2:00	4/11/2020 3:00	4/6/2020 2:00	4/11/2020 3:00	121:00	121:00	Exhaust system
Trimble County Unit 10 - Gas CT - 179 MW	S	11/23/2019 0:00	12/8/2019 0:00	11/20/2019 20:00	12/3/2019 17:26	360:00	309:26	Exciter controls
In-service July 2004	S	12/3/2019 21:07	12/5/2019 22:36	12/3/2019 21:07	12/5/2019 22:36	49:29	49:29	Starting System - Static Start Switch
Jointly owned with KU	S	12/5/2019 22:51	12/6/2019 7:51	12/5/2019 22:51	12/6/2019 7:51	9:00	9:00	Starting System - Static Start Switch
	S	1/15/2020 7:00	1/15/2020 15:00	1/15/2020 7:00	1/15/2020 15:00	8:00	8:00	Gas orifice meter inspection
Zorn Unit 1 - Gas CT - 16 MW	F			1/8/2020 12:57	1/17/2020 15:38		218:41	Combustion Turbine Auxiliary Electrical System
In-service May 1969	S	3/4/2020 7:24	3/4/2020 14:12	3/4/2020 7:24	3/4/2020 14:12	6:48	6:48	Starting (Diesel) System Maintenance
	F			3/20/2020 10:10			Ongoing	Generator/Exciter Lockout

*Actual outage dates and hours of duration include scheduled and forced outages.

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information
Dated August 19, 2020

Case No. 2020-00248

Question No. 16

Responding Witness: Stuart Wilson

Q-16. For the period under review, provide the monthly capacity factor at which each generating unit operated.

A-16. See table below.

	Capacity Factor (%) (Net MWh)/(period hours x MW rating)					
Unit	Nov 2019	Dec 2019	Jan 2020	Feb 2020	Mar 2020	Apr 2020
Brown 5	15.9	0.3	1.6	4.7	2.8	0.6
Brown 6	38.0	0.0	1.7	4.2	11.1	2.4
Brown 7	17.8	14.2	1.7	0.0	3.7	0.0
Brown Solar	14.2	8.8	10.7	11.7	16.6	22.6
Cane Run 7	95.4	65.6	93.7	62.1	0.0	62.9
Mill Creek 1	65.9	71.1	70.6	70.3	59.1	66.9
Mill Creek 2	75.0	67.4	82.9	80.9	85.2	39.2
Mill Creek 3	0.0	8.3	27.7	74.3	64.4	34.7
Mill Creek 4	74.6	73.1	68.4	69.4	71.0	25.8
Ohio Falls 1	53.9	28.6	4.5	16.5	3.7	6.1
Ohio Falls 2	65.0	31.0	6.8	18.7	7.7	10.8
Ohio Falls 3	75.2	31.5	11.0	19.7	8.9	12.3
Ohio Falls 4	72.9	32.0	11.3	19.4	8.7	11.7
Ohio Falls 5	74.1	31.1	10.6	18.4	8.3	11.2
Ohio Falls 6	63.6	32.8	11.9	19.3	8.7	13.0
Ohio Falls 7	56.4	34.3	13.8	20.2	9.8	13.5
Ohio Falls 8	60.5	33.2	14.9	20.5	9.8	13.9
Paddys Run 11	0.0	0.0	0.0	0.0	0.0	0.0
Paddys Run 12	0.0	0.0	0.0	0.0	0.0	0.0
Paddys Run 13	5.5	2.5	0.8	0.8	9.2	0.0
Trimble County 1	16.7	84.5	86.4	85.0	86.2	84.3
Trimble County 2	96.4	93.2	83.8	90.2	91.9	86.4
Trimble County 5	33.6	13.2	4.0	29.2	35.9	8.2
Trimble County 6	15.2	3.8	2.2	2.0	2.0	0.0
Trimble County 7	28.7	7.6	2.4	6.9	20.6	6.1
Trimble County 8	4.9	11.8	2.3	5.3	17.0	1.9
Trimble County 9	37.6	13.2	1.9	9.0	42.1	1.8
Trimble County 10	2.8	3.1	3.0	1.6	0.7	0.9
Zorn	0.0	0.0	0.0	0.0	0.0	0.0

Notes:
1 – Trimble County values reflect 100% of the unit. Trimble County 1 is owned by LG&E (75%), IMPA (12.88%), and IMEA (12.12%). Trimble County 2 is owned by KU (60.75%), LG&E (14.25%), IMPA (12.88%), and IMEA (12.12%).

2 – The North American Electric Reliability Council Generation Availability Data System defines capacity factor as the value equal to the net MWh produced divided by the product of the hours in the period and the unit rating.

3 – Jointly owned units are shown for both LG&E and KU and include Brown 5-7, Brown Solar, Cane Run 7, Paddy's Run 13, Trimble County 2, and Trimble County 5-10.

4 – Cane Run 11 retired 11/30/2019.

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information
Dated August 19, 2020

Case No. 2020-00248

Question No. 17

Responding Witness: Michael P. Drake

Q-17. For the period under review:

a. Explain whether LG&E made any changes to its maintenance and operation practices or completed any specific generation efficiency improvements that affect fuel usage at LG&E's generation facilities.

b. Describe the impact of these changes on LG&E's fuel usage.

A-17.

a-b. There have been no maintenance or operation practice changes that affect fuel usage during the period under review. LG&E strives to maintain unit efficiency through routine cyclic planned outage maintenance. This maintenance work continues to focus on reestablishing expected turbine efficiency through continuous monitoring of all plan systems during operation. LG&E contracts Black and Veatch to provide this monitoring on larger units to identify trends which indicate a potential efficiency loss of any system component. Black and Veatch sends notification to the generating stations which track the potential issues through resolution. In evaluating potential major component projects or replacements that may impact efficiency, LG&E must balance any potential efficiency benefit associated with the project against both costs and potential implications under the Clean Air Act. LG&E has not realized any efficiency improvements through major component projects during this period.

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information
Dated August 19, 2020

Case No. 2020-00248

Question No. 18

Responding Witness: Delbert Billiter / Charles R. Schram

Q-18. State whether LG&E is aware of any violations of its policies and procedures regarding fuel procurement that occurred prior to or during the period under review.

A-18. LG&E is not aware of any violations of its policies and procedures regarding fuel procurement that occurred prior to or during the period under review.

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information
Dated August 19, 2020

Case No. 2020-00248

Question No. 19

Responding Witness: Andrea M. Fackler

Q-19. State whether LG&E is aware of any violations of 807 KAR 5:056 that occurred prior to or during the period under review.

A-19. LG&E is not aware of any violations of 807 KAR 5:056 that occurred prior to or during the period under review.

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information Dated August 19, 2020

Case No. 2020-00248

Question No. 20

Responding Witness: Andrea M. Fackler

Q-20. State whether all fuel contracts related to commodity and transportation have been filed with the Commission. If any contracts have not been filed, explain why they have not been filed, and provide a copy.

A-20. For the period under review, all fuel contracts related to commodity and/or transportation have been filed with the Commission.

LOUISVILLE GAS AND ELECTRIC COMPANY

Response to Commission Staff's First Request for Information
Dated August 19, 2020

Case No. 2020-00248

Question No. 21

Responding Witness: Delbert Billiter

Q-21. Refer to 807 KAR 5:056 3(5), which states, "For any contracts entered into on or after December 1, 2019, the commission shall, in determining the reasonableness of fuel costs in procurement contracts and fuel procurement practices, evaluate the reasonableness of fuel costs in contracts and competing bids based on the cost of the fuel less any coal severance tax imposed by any jurisdiction."

a. Provide a listing of any new coal contracts entered into on or since December 1, 2019.

b. For each bid solicitation or potential spot purchase that resulted in a new purchase contract on or after December 1, 2019, provide the bid evaluation sheets that include the coal severance tax rate per ton or MMBTU, as appropriate, being levied.

A-21. LG&E and KU have entered into three contracts since December 1, 2019. The information concerning the solicitation from which these contracts originated was provided to the Commission in Case No. 2020-00007 in response to Question No. 1-4.

a. The three contracts entered into after December 1, 2019 are as follows:
Western Ky. Minerals -- J20006
Alliance Coal Warrior (rail) -- J21003
Alliance Coal River View (barge) -- J21004

b. See attached bid analysis information. The information requested is confidential and proprietary and is being provided under seal pursuant to a petition for confidential protection.

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