

**The Union Light, Heat and Power Company
d/b/a Duke Energy Kentucky
Case No. 2006-00172
Forecasted Test Period Filing Requirements
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PUBLIC SERVICE
COMMISSION

Vol. #	Tab #	Filing Requirement	Description	Sponsoring Witness
1	1	KRS 278.180	30 days' notice of rates to PSC.	Sandra P. Meyer
1	2	807 KAR 5:001 Section 8 (1)	Full name and P. O. address of applicant and reference to the particular provision of law requiring PSC approval.	Sandra P. Meyer
1	3	807 KAR 5:001 Section 8 (2)	The original and 10 copies of application plus copy for anyone named as interested party.	Sandra P. Meyer
1	4	807 KAR 5:001 Section 10 (1)(b)(1)	Reason adjustment is required.	Paul G. Smith
1	5	807 KAR 5:001 Section 10 (1)(b)(2)	Statement that utility's annual reports, including the most recent calendar year, are filed with PSC. 807 KAR 5:006, Section 3 (1).	Dwight L. Jacobs
1	6	807 KAR 5:001 Section 10 (1)(b)(3) and (5)	If utility is incorporated, certified copy of articles of incorporation and amendments or out of state documents of similar import. If they have already been filed with PSC refer to the style and case number of the prior proceeding and file a certificate of good standing or authorization dated within 60 days of date application filed.	Sandra P. Meyer
1	7	807 KAR 5:001 Section 10 (1)(b)(4)	If applicant is limited partnership, certified copy of limited partnership agreement. If agreement filed with PSC refer to style and case number of prior proceeding and file a certificate of good standing or authorization dated within 60 days of date application filed.	Sandra P. Meyer
1	8	807 KAR 5:001 Section 10 (1)(b)(6)	Certified copy of certificate of assumed name required by KRS 365.015 or statement that certificate not necessary.	Sandra P. Meyer
1	9	807 KAR 5:001 Section 10 (1)(b)(7)	Proposed tariff in form complying with 807 KAR 5:011 effective not less than 30 days from date application filed.	Jeffrey R. Bailey
1	10	807 KAR 5:001 Section 10 (1)(b)(8)	Proposed tariff changes shown by present and proposed tariffs in comparative form or by indicating additions in italics or by underscoring and striking over deletions in current tariff.	Jeffrey R. Bailey
1	11	807 KAR 5:001 Section 10 (1)(b)(9)	Statement that notice given, see subsections (3) and (4) of 807 KAR 5:001, Section 10 with copy.	Sandra P. Meyer
1	12	807 KAR 5:001 Section 10 (2)	If gross annual revenues exceed \$1,000,000, written notice of intent filed at least 4 weeks prior to application. Notice shall state whether application will be supported by historical or fully forecasted test period.	Sandra P. Meyer
1	13	807 KAR 5:001 Section 10 (4) (a)	Sewer utilities shall give the required typewritten notice by mail to all of their customers pursuant to KRS 278.185.	Sandra P. Meyer
1	14	807 KAR 5:001 Section 10 (4)(b)	Applicants with twenty (20) or fewer customers affected by the proposed general rate adjustment shall mail the required typewritten notice to each customer no later than the date the application is	Sandra P. Meyer

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			filed with the commission.	
1	15	807 KAR 5:001 Section 10 (4)(c)	Except for sewer utilities, applicants with more than twenty (20) customers affected by the proposed general rate adjustment shall give the required notice by one (1) of the following methods: 1. A typewritten notice mailed to all customers no later than the date the application is filed with the commission; 2. Publishing the notice in a trade publication or newsletter which is mailed to all customers no later than the date on which the application is filed with the commission; or 3. Publishing the notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made within seven (7) days of the filing of the application with the commission.	Sandra P. Meyer
1	16	807 KAR 5:001 Section 10 (4)(d)	If notice is published, an affidavit from the publisher verifying that the notice was published, including the dates of the publication with an attached copy of the published notice, shall be filed with the Commission no later than forty-five (45) days of the filed date of the application.	Sandra P. Meyer
1	17	807 KAR 5:001 Section 10 (4)(e)	If notice is mailed, a written statement signed by the utility's chief officer in charge of Kentucky operations verifying the notice was mailed shall be filed with the Commission no later than thirty (30) days of the filed date of the application.	Sandra P. Meyer
1	18	807 KAR 5:001 Section 10 (4)(f)	All utilities, in addition to the above notification, shall post a sample copy of the required notification at their place of business no later than the date on which the application is filed which shall remain posted until the commission has finally determined the utility's rates.	Sandra P. Meyer
1	19	807 KAR 5:001 Section 10 (5)	Notice of hearing scheduled by the commission upon application by a utility for a general adjustment in rates shall be advertised by the utility by newspaper publication in the areas that will be affected in compliance with KRS 424.300.	Sandra P. Meyer
1	20	807 KAR 5:001 Section 10 (8)(a)	Financial data for forecasted period presented as pro forma adjustments to base period.	William Don Wathen, Jr.
1	21	807 KAR 5:001 Section 10 (8)(b)	Forecasted adjustments shall be limited to the 12 months immediately following the suspension period.	William Don Wathen, Jr.
1	22	807 KAR 5:001 Section 10 (8)(c)	Capitalization and net investment rate base shall be based on a 13 month average for the forecasted period.	William Don Wathen, Jr.

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1	23	807 KAR 5:001 Section 10 (8)(d)	After an application based on a forecasted test period is filed, there shall be no revisions to the forecast, except for the correction of mathematical errors, unless such revisions reflect statutory or regulatory enactments that could not, with reasonable diligence, have been included in the forecast on the date it was filed. There shall be no revisions filed within thirty (30) days of a scheduled hearing on the rate application.	William Don Wathen, Jr.
1	24	807 KAR 5:001 Section 10 (8)(e)	The commission may require the utility to prepare an alternative forecast based on a reasonable number of changes in the variables, assumptions, and other factors used as the basis for the utility's forecast.	William Don Wathen, Jr.
1	25	807 KAR 5:001 Section 10 (8)(f)	Reconciliation of rate base and capital used to determine revenue requirements.	William Don Wathen, Jr.
1	26	807 KAR 5:001 Section 10 (9)(a)	Prepared testimony of each witness supporting its application including testimony from chief officer in charge of Kentucky operations on the existing programs to achieve improvements in efficiency and productivity, including an explanation of the purpose of the program.	All witnesses
1	27	807 KAR 5:001 Section 10 (9)(b)	Most recent capital construction budget containing at minimum 3 year forecast of construction expenditures.	Jim L. Stanley John J. Roebel
1	28	807 KAR 5:001 Section 10 (9)(c)	Complete description, which may be in prefiled testimony form, of all factors used to prepare forecast period. All econometric models, variables, assumptions, escalation factors, contingency provisions, and changes in activity levels shall be quantified, explained, and properly supported.	Brian P. Davey
1	29	807 KAR 5:001 Section 10 (9)(d)	Annual and monthly budget for the 12 months preceding filing date, base period and forecasted period.	Brian P. Davey
1	30	807 KAR 5:001 Section 10 (9)(e)	Attestation signed by utility's chief officer in charge of Kentucky operations providing: 1. That forecast is reasonable, reliable, made in good faith and that all basic assumptions used have been identified and justified; and 2. That forecast contains same assumptions and methodologies used in forecast prepared for use by management, or an identification and explanation for any differences; and 3. That productivity and efficiency gains are included in the forecast.	Sandra P. Meyer
1	31	807 KAR 5:001 Section 10 (9)(f)	For each major construction project constituting 5% or more of annual construction budget within 3 year forecast, following information shall be filed: 1. Date project began or estimated starting date;	Jim L. Stanley John J. Roebel

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			2. Estimated completion date; 3. Total estimated cost of construction by year exclusive and inclusive of Allowance for Funds Used During construction ("AFUDC") or Interest During construction Credit; and 4. Most recent available total costs incurred exclusive and inclusive of AFUDC or Interest During Construction Credit.	
1	32	807 KAR 5:001 Section 10 (9)(g)	For all construction projects constituting less than 5% of annual construction budget within 3 year forecast, file aggregate of information requested in paragraph (f) 3 and 4 of this subsection.	Jim L. Stanley John J. Roebel
1	33	807 KAR 5:001 Section 10 (9)(h)	Financial forecast for each of 3 forecasted years included in capital construction budget supported by underlying assumptions made in projecting results of operations and including the following information: 1. Operating income statement (exclusive of dividends per share or earnings per share); 2. Balance sheet; 3. Statement of cash flows; 4. Revenue requirements necessary to support the forecasted rate of return; 5. Load forecast including energy and demand (electric); 6. Access line forecast (telephone); 7. Mix of generation (electric); 8. Mix of gas supply (gas); 9. Employee level; 10. Labor cost changes; 11. Capital structure requirements; 12. Rate base; 13. Gallons of water projected to be sold (water); 14. Customer forecast (gas, water); 15. MCF sales forecasts (gas); 16. Toll and access forecast of number of calls and number of minutes (telephone); and 17. A detailed explanation of any other information provided.	Brian P. Davey Lynn J. Good #6, #13, #16 & #17 Not applicable
1	34	807 KAR 5:001 Section 10 (9)(i)	Most recent FERC or FCC audit reports.	Dwight L. Jacobs
1	35	807 KAR 5:001 Section 10 (9)(j)	Prospectuses of most recent stock or bond offerings.	Lynn J. Good
1	36	807 KAR 5:001 Section 10 (9)(k)	Most recent FERC Form 1 (electric), FERC Form 2 (gas), or the Automated Reporting Management Information System Report (telephone) and PSC Form T (telephone).	Dwight L. Jacobs
2	37	807 KAR 5:001 Section 10 (9)(l)	Annual report to shareholders or members and statistical supplements for the most recent 5 years prior to application filing date.	Dwight L. Jacobs

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3	38	807 KAR 5:001 Section 10 (9)(m)	Current chart of accounts if more detailed than Uniform System of Accounts charts.	Dwight L. Jacobs
3	39	807 KAR 5:001 Section 10 (9)(n)	Latest 12 months of the monthly managerial reports providing financial results of operations in comparison to forecast.	Brian P. Davey
3	40	807 KAR 5:001 Section 10 (9)(o)	Complete monthly budget variance reports, with narrative explanations, for the 12 months prior to base period, each month of base period, and subsequent months, as available.	Brian P. Davey
4-7	41	807 KAR 5:001 Section 10 (9)(p)	SEC's annual report for most recent 2 years, Form 10-Ks and any Form 8-Ks issued during prior 2 years and any Form 10-Qs issued during past 6 quarters.	Dwight L. Jacobs
8	42	807 KAR 5:001 Section 10 (9)(q)	Independent auditor's annual opinion report, with any written communication which indicates the existence of a material weakness in internal controls.	Dwight L. Jacobs
8	43	807 KAR 5:001 Section 10 (9)(r)	Quarterly reports to the stockholders for the most recent 5 quarters.	Dwight L. Jacobs
8	44	807 KAR 5:001 Section 10 (9)(s)	Summary of latest depreciation study with schedules itemized by major plant accounts, except that telecommunications utilities adopting PSC's average depreciation rates shall identify current and base period depreciation rates used by major plant accounts. If information has been filed in another PSC case, refer to that case's number and style.	John J. Spanos
8	45	807 KAR 5:001 Section 10 (9)(t)	List all commercial or in-house computer software, programs, and models used to develop schedules and work papers associated with application. Include each software, program, or model; its use; identify the supplier of each; briefly describe software, program, or model; specifications for computer hardware and operating system required to run program	William Don Wathen, Jr.

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8	46	807 KAR 5:001 Section 10 (9)(u)	If utility had any amounts charged or allocated to it by affiliate or general or home office or paid any monies to affiliate or general or home office during the base period or during previous 3 calendar years, file: 1. Detailed description of method of calculation and amounts allocated or charged to utility by affiliate or general or home office for each allocation or payment; 2. method and amounts allocated during base period and method and estimated amounts to be allocated during forecasted test period; 3. Explain how allocator for both base and forecasted test period was determined; and 4. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated or paid during base period is reasonable.	Carol E. Shrum
9	47	807 KAR 5:001 Section 10 (9)(v)	If gas, electric or water utility with annual gross revenues greater than \$5,000,000, cost of service study based on methodology generally accepted in industry and based on current and reliable data from single time period.	Paul F. Ochsner
10	48	807 KAR 5:001 Section 10 (9)(w)	Local exchange carriers with fewer than 50,000 access lines need not file cost of service studies, except as specifically directed by PSC. Local exchange carriers with more than 50,000 access lines shall file: 1. Jurisdictional separations study consistent with Part 36 of the FCC's rules and regulations; and 2. Service specific cost studies supporting pricing of services generating annual revenue greater than \$1,000,000 except local exchange access: a. Based on current and reliable data from single time period; and b. Using generally recognized fully allocated, embedded, or incremental cost principles.	Not applicable
10	49	807 KAR 5:001 Section 10 (10)(a)	Jurisdictional financial summary for both base and forecasted periods detailing how utility derived amount of requested revenue increase.	William Don Wathen, Jr.
10	50	807 KAR 5:001 Section 10 (10)(b)	Jurisdictional rate base summary for both base and forecasted periods with supporting schedules which include detailed analyses of each component of the rate base.	William Don Wathen, Jr.
10	51	807 KAR 5:001 Section 10 (10)(c)	Jurisdictional operating income summary for both base and forecasted periods with supporting schedules which provide breakdowns by major account group and by individual account.	William Don Wathen, Jr.

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10	52	807 KAR 5:001 Section 10 (10)(d)	Summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors.	William Don Wathen, Jr.
10	53	807 KAR 5:001 Section 10 (10)(e)	Jurisdictional federal and state income tax summary for both base and forecasted periods with all supporting schedules of the various components of jurisdictional income taxes.	Keith G. Butler
10	54	807 KAR 5:001 Section 10 (10)(f)	Summary schedules for both base and forecasted periods (utility may also provide summary segregating items it proposes to recover in rates) of organization membership dues; initiation fees; expenditures for country club; charitable contributions; marketing, sales, and advertising; professional services; civic and political activities; employee parties and outings; employee gifts; and rate cases.	William Don Wathen, Jr.
10	55	807 KAR 5:001 Section 10 (10)(g)	Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title.	William Don Wathen, Jr.
10	56	807 KAR 5:001 Section 10 (10)(h)	Computation of gross revenue conversion factor for forecasted period.	William Don Wathen, Jr.
10	57	807 KAR 5:001 Section 10 (10)(i)	Comparative income statements (exclusive of dividends per share or earnings per share), revenue statistics and sales statistics for 5 calendar years prior to application filing date, base period, forecasted period, and 2 calendar years beyond forecast period.	Brian P. Davey
10	58	807 KAR 5:001 Section 10 (10)(j)	Cost of capital summary for both base and forecasted periods with supporting schedules providing details on each component of the capital structure.	Lynn J. Good
10	59	807 KAR 5:001 Section 10 (10)(k)	Comparative financial data and earnings measures for the 10 most recent calendar years, base period, and forecast period.	Brian P. Davey
10	60	807 KAR 5:001 Section 10 (10)(l)	Narrative description and explanation of all proposed tariff changes.	Jeffrey R. Bailey
10	61	807 KAR 5:001 Section 10 (10)(m)	Revenue summary for both base and forecasted periods with supporting schedules which provide detailed billing analyses for all customer classes.	Jeffrey R. Bailey
10	62	807 KAR 5:001 Section 10 (10)(n)	Typical bill comparison under present and proposed rates for all customer classes.	Jeffrey R. Bailey

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10	63	807 KAR 5:001 Section (10)(3)	Amount of change requested in dollar amounts and percentage for each customer classification to which change will apply. a. Present and proposed rates for each customer class to which change would apply. b. Electric, gas, water and sewer utilities-the effect upon average bill for each customer class to which change would apply. c. Local exchange companies-include effect upon average bill for each customer class for change in basic local service.	Jeffrey R. Bailey
10	64	807 KAR 5:001 Section 10 (4)(c)(d)(e)(f)	If copy of public notice included, did it meet requirements?	Sandra P. Meyer
10	65	807 KAR 5:001 Section 6(1)	Amount and kinds of stock authorized.	Lynn J. Good
10	66	807 KAR 5:001 Section 6(2)	Amount and kinds of stock issued and outstanding.	Lynn J. Good
10	67	807 KAR 5:001 Section 6(3)	Terms of preference of preferred stock whether cumulative or participating, or on dividends or assets or otherwise.	Lynn J. Good
10	68	807 KAR 5:001 Section 6(4)	Brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee, or trustee, amount of indebtedness authorized to be secured thereby, and the amount of indebtedness actually secured, together with any sinking fund provisions.	Lynn J. Good
10	69	807 KAR 5:001 Section 6(5)	Amount of bonds authorized, and amount issued, giving the name of the public utility which issued the same, describing each class separately, and giving date of issue, face value, rate of interest, date of maturity and how secured, together with amount of interest paid thereon during the last fiscal year.	Lynn J. Good
10	70	807 KAR 5:001 Section 6(6)	Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid thereon during the last fiscal year.	Lynn J. Good
10	71	807 KAR 5:001 Section 6(7)	Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid thereon during the last fiscal year.	Lynn J. Good
10	72	807 KAR 5:001 Section 6(8)	Rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year.	Lynn J. Good
10	73	807 KAR 5:001 Section 6(9)	Detailed income statement and balance sheet.	William Don Wathen, Jr.

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11	-	807 KAR 5:001 Section 10(10) (a) through (k)	Schedule Book (Schedules A-K)	Various
12	-	807 KAR 5:001 Section 10(10) (l) through (n)	Schedule Book (Schedules L-N)	Various
13	-	-	Work papers	Various
14	-	807 KAR 5:001 Section 10(9)(a)	Testimony (Volume 1 of 2)	-
15	-	807 KAR 5:001 Section 10(9)(a)	Testimony (Volume 2 of 2)	-
16	-	KRS 278.2205(6)	Cost Allocation Manual	-
17	-	807 KAR 5:056 Section 1(7)	Coal Contracts	-

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF THE ADJUSTMENT
OF ELECTRIC RATES OF THE UNION
LIGHT, HEAT AND POWER COMPANY
D/B/A DUKE ENERGY KENTUCKY

CASE NO. 2006- 00172

FILING REQUIREMENTS

VOLUME 17

COAL CONTRACTS

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c	Consent – two Confirms
d	Tyrone Master (re: ULH&P) – Amend
e	Tyrone Confirms
2 (Long form Confirm)	
a	ULH&P Agreement
b	Tyrone Shadow (re: ULH&P)
3	a ULH&P Long Form
b	Tyrone Shadow
4	a ULH&P Long Form (Master)
b	Tyrone Shadow
5	a ULH&P Tyrone Amendment
b	Assignment & Assumption
c	Consent

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MASTER COAL PURCHASE AND SALE AGREEMENT

This Master Coal Purchase and Sale Agreement ("Master Agreement") is entered into this 21st of Dec 2005, (the "Effective Date") by and between **The Union Light, Heat and Power Company ("ULH&P")** and

ULH&P and (each a "Party" and collectively, the "Parties") may, but shall not be required to, enter into Transactions which will be governed by this Master Agreement. Any capitalized term used herein and not defined in the Article in which it appears shall have the meaning set forth in Article 11 hereof. **ULH&P** and hereby agree as follows:

Article 1: Transactions

1.1 Procedures

A Transaction shall be entered into by means of an offer to buy or sell Coal or to buy or sell an Option by either Party to the other Party (through their respective agents and/or representatives) in writing or in the absence of a writing, a telephone conversation that may be recorded (each Party hereby consents to such recording of such conversations without any further notice) and the acceptance of such offer by the offeree (through their respective agents and/or representatives) in such telephone conversation, if such telephone conversation contains all of the terms and conditions relevant to the Transaction that would be required in a Confirmation as set forth in Section 1.2 below. Any such Transaction shall be evidenced by a Confirmation (as hereinafter defined) as provided herein. Each Party agrees that it is legally bound by the terms of a Transaction, as supplemented by this Master Agreement, from the moment on a particular date ("Trade Date") those terms (whether orally or otherwise) are agreed. As a material part of the consideration for entering into this Master Agreement, if the telephonic transaction contains all of the necessary criteria to be considered a Transaction as provided above, each of the Parties agrees not to contest or assert (and hereby releases any right to) any defense to the (i) validity or enforceability of telephonic Transactions entered into by them under laws relating to whether certain agreements are to be in writing or signed by such Party to be thereby bound so long as such telephonic Transactions contain all of the necessary criteria to be considered a valid Transaction as provided above, or (ii) the authority of any employee or representative. The manner of entering into a Transaction as described in this Article 1 is not intended to be the exclusive manner of forming a binding agreement between the Parties regarding a Transaction. Facsimile signatures shall be considered as original signatures for all purposes under this Master Agreement.

1.2 Confirmations

- a) The selling party ("Transaction Seller") will execute and send via facsimile to the buying party ("Transaction Buyer"), promptly after agreement as to a Transaction, a written confirmation memorializing the Transaction ("Confirmation"), which is substantially in the form attached hereto as Exhibit A. Each Confirmation will be promptly executed by the Transaction Buyer, if it accurately sets forth the terms and conditions of the Transaction agreed by the Parties, and returned to the Transaction Seller within three (3) Business Days of

receipt. Each Confirmation will list the terms and conditions for the agreed Transaction not otherwise covered by this Master Agreement, including, without limitation, Transaction Buyer and Transaction Seller, Transaction Quantity, Term, Nomination Period(s), Scheduling, Transaction Price, Source(s), Delivery Point(s), Loading Capacities, Specifications, Periodic Performance Qualities (if needed, set forth in Schedule 2 of Exhibit A), Rejection Limits, premiums and/or penalties, and, if the Transaction includes an Option, Option Quantity, Exercise Date(s), Strike Price(s) and any other relevant terms agreed to by the Parties to the Transaction, including any exceptions to the Master Agreement. Should Transaction Seller fail to issue a Confirmation within three (3) Business Days after agreement to a Transaction then the Transaction Buyer may issue a Confirmation which will evidence the Transaction.

- b) Absent a manifest error, a Confirmation sent as provided above (by the "Sending Party") shall be considered correct upon receipt by the other party ("Receiving Party") unless within three (3) Business Days after the Receiving Party's receipt of the Confirmation, the Receiving Party notifies the Sending Party that the Confirmation contains a bona fide error and that a correction is necessary, in which case the Confirmation as revised by the Receiving Party and agreed to by the Sending Party to correct the error shall be the definitive Confirmation for the Transaction. If any dispute shall arise as to whether an error exists, the parties to the Transaction will, in good faith, make Commercially Reasonable Efforts to resolve the dispute. If the dispute, regarding an issue that either Party deems material, cannot be resolved within ten (10) Business Days after Receiving Party's notice of the dispute, either Party may refer the dispute to Arbitration pursuant to Article 9 hereof. Notwithstanding the above, if the Receiving Party has not timely notified the Sending Party of a bona fide error in the Confirmation or has not otherwise replied in writing to the Confirmation within three (3) Business Days after its receipt, absent manifest error, the Confirmation shall be deemed correct and binding and conclusive evidence of the Transaction agreed to by the Parties. A Party's failure to send a Confirmation or a Party's failure to reply to or return a Confirmation shall not invalidate any otherwise valid Transaction.
- c) Except as otherwise provided in this Master Agreement, in the event of any inconsistency between the provisions of this Master Agreement and the terms set forth in a Confirmation, such Confirmation will prevail for the purpose of the relevant Transaction. Terms and conditions set forth in any fully executed Confirmation that are inconsistent with any recorded oral terms and conditions shall be resolved in favor of the fully executed confirmation, unless there is a manifest error. Terms and conditions set forth in a Confirmation that is not executed by both Parties that are inconsistent with any recorded oral terms and conditions shall be resolved in favor of the recorded oral terms and conditions.
- d) Each Confirmation shall supplement and form a part of this Master Agreement and shall be read and construed together with this Master Agreement and all other applicable Annexes and Exhibits, which constitute a single integrated agreement between the Parties, and all the Transactions contemplated in Confirmations shall

be integral parts of this Master Agreement. All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the Parties.

- e) Transactions entered into between the Parties prior to the Effective Date of this Master Agreement shall be governed by this Master Agreement, and in the event any terms of this Master Agreement and the Existing Transactions are conflicting or inconsistent, the terms of the Existing Transactions will control.

1.3 Representations

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

- a) The execution, delivery and performance of this Master Agreement and the relevant Transaction have been duly authorized by all necessary corporate or other organizational action on its part and do not violate or conflict with any law applicable to it, its organizational documents or any order or judgment of a court or other agency of government applicable to it or its assets;
- b) Its obligations under this Master Agreement and each Transaction are legally valid and binding obligations, enforceable in accordance with their terms;
- c) It has any and all necessary governmental and other third party permits, approvals and licenses required in connection with the execution, delivery and performance of this Master Agreement and any Transaction; and
- d) There are no Bankruptcy Proceedings pending or being contemplated by it or, to its knowledge, threatened against it.
- e) There are no Legal Proceedings pending or, to its knowledge, threatened against it or any of its Affiliates that are likely to affect the legality, validity, enforceability or its ability to perform its obligations under this Master Agreement and each Transaction.

Article 2: Term

The term of this Master Agreement (the "Master Agreement Term") shall commence on the Effective Date and shall remain in effect until terminated by either Party upon thirty (30) days prior written notice; provided, however, that such termination shall not affect or excuse the performance of any Party under any provision of this Master Agreement that by its terms survives any such termination, and this Master Agreement and any relevant Confirmations shall remain in effect with respect to any Transaction(s) entered into on or prior to the date of the termination until each Party has fulfilled all of its obligations with respect to all such Transaction(s).

Article 3: Obligations

3.1 Obligations for Purchase and Sale of Coal

- (a) Subject to Article 3.1 (b) below, during the Term of each Transaction, Seller agrees to sell and deliver to the Buyer, and Buyer agrees to purchase, accept and pay for from

Seller, the Contract Quantity of Coal to be delivered at the Delivery Point as provided for in the relevant Confirmation.

(b) Pursuant to the Tyrone Master Agreement, Tyrone and _____ may enter into Tyrone Confirmations pursuant to which Tyrone will purchase or have the option to purchase Coal from CTPY that would otherwise be purchased by ULH&P pursuant to a Confirmation governed by this Master Agreement that corresponds to a particular Tyrone Confirmation ("Corresponding Tyrone Confirmation"). _____ acknowledges and agrees that any Coal that Tyrone Confirmation purchases or agrees to purchase pursuant to a Corresponding Tyrone Confirmation shall be credited towards the satisfaction of ULH&P's obligation to purchase Coal under any corresponding Confirmation entered into pursuant to this Master Agreement, to the same extent as if ULH&P had purchased such Coal. The Corresponding Tyrone Confirmation and Tyrone Master Agreement shall govern such transaction between _____ and Tyrone. _____ further acknowledges that ULH&P shall have no obligations under this Master Agreement or any Confirmation with respect to any Coal that Tyrone purchases or agrees to purchase, and agrees that _____ shall look solely to _____ for the payment for, and for the performance of any obligations with respect to, any Coal that Tyrone purchases or agrees to purchase from _____ pursuant to the Tyrone Master Agreement or any Tyrone Confirmation.

(c) ULH&P agrees that any Coal that Tyrone agrees to purchase pursuant to an Tyrone Confirmation that has a corresponding Confirmation entered into pursuant to this Master Agreement that is shipped for delivery to ULH&P receiving facilities for the East Bend Station located in Rabbit Hash, KY after the date on which the Synfuel Sales Agreement terminates shall be purchased by ULH&P pursuant to this Master Agreement and the applicable Confirmation entered into pursuant to this Master Agreement.

3.2 Scheduling

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

3.3 Delivery

a) Barge or vessel deliveries

For barge or vessel deliveries, the Coal shall be delivered to Buyer FOB barge or vessel at the Delivery Point. Title to and risk of loss of the Coal will pass to Buyer upon each barge or vessel being fully loaded and trimmed. Buyer or its Transporter shall furnish suitable barges or vessels for delivery of the Coal. Such barges or vessels shall be compatible with the Source's coal loading facilities to be utilized by

Seller and shall be properly prepared to receive coal. Coal haulage or transportation equipment provided by either Seller or Buyer, as the case may be, shall be clean, dry and suitable for the transportation of coal. Seller shall arrange for and pay all costs of transporting the Coal to the Delivery Point and handling and loading the Coal into barges or vessels to the proper draft and proper distribution in such barges or vessels. Buyer shall arrange for and pay all costs for transporting the Coal by barge or vessel from and after the Delivery Point to its destination. If the Delivery Point is at a Source such that the Coal will have been transported by barge or vessel prior to delivery, then title to and risk of loss of the Coal will pass to Buyer upon the earlier to occur of (i) the safe and proper mooring of the barge(s) or vessel(s) at the Delivery Point loading dock or discharge point or (ii) other transfer of the custody and control of the barge(s) or vessel(s) to Buyer or Buyer's Transporter.

b) Rail or truck deliveries

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

c) Shipping notices

For each delivery by vessel, barge, truck, or rail, Seller shall supply Buyer with a shipping notice which shall include the vessel name, train or barge or truck number, Source from which supplied, tonnage shipped, shipping date, destination, along with the analysis information required under Section 4.1 and any other information reasonably required by Buyer and agreed to by Seller. Seller shall within two (2) Business Days of loading or prior to arrival of the vessel, barge, truck or train (as applicable) at the destination following loading of such shipment (whichever comes first), send the shipping notice to Buyer by telecopy or other means as agreed to between Buyer and Seller. Notwithstanding the obligations to send shipping notices as provided in the previous sentence, Seller agrees to use Commercially Reasonable Efforts to send any such notices. Seller shall also provide Buyer Bill of Lading for each delivery which shall include name of Seller, contract number or purchase order number, train, truck or barge number, date loaded and Seller's delivered weights. Seller shall, as soon as is reasonably possible, notify Buyer of any loading deficiencies or delays in loading via telephone or other electronic means.

d) Demurrage

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

e) Freeze Control

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

f) Buyer's Administrative Obligation

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

- (i) Buyer shall inform Seller at least twenty-four (24) hours in advance of arrival of each Unit Train, truck, barge or vessel at the Source's mine/loadout of the identification number of the Unit Train truck, barge or vessel, identification of Buyer's Customer, and destination of such Unit Train truck, barge or vessel.
- (ii) The loading of such Unit Train shall be in accordance with the loading provisions provided to Seller herein unless Buyer notified Seller in advance of different loading provisions and such different loading provisions are in general accordance with general operating parameters in the mine's/loadout's region, and do not, in Seller's reasonable opinion, impose an undue operating or economic burden on Seller.
- (iii) All information to be supplied by Seller to Buyer under this Master Agreement including but not limited to analysis, weights, train manifest and invoicing information shall be supplied to Buyer and Buyer shall be responsible for transmitting such information to Buyer's Customer.

3.4 Title and Indemnity

Seller warrants that at the time of delivery it will have title to the Coal, and will deliver the Coal to Buyer, free and clear of all liens, claims and encumbrances arising prior to the

transfer of title to Buyer. Seller and Buyer shall each indemnify, defend and hold harmless the other Party from any Claims arising from failure of title or loss of the Coal while title to and risk of loss of the Coal is vested in the indemnifying Party.

3.5 Substitute Coal

Unless otherwise restricted by the subject Confirmation, Seller shall, by giving timely notice as provided in Section 3.2 above, have the option, subject to Buyer's approval, not to be unreasonably withheld, to provide the Coal from any alternate source Seller may select. Any such substituted Coal must comply with all Specifications for the Coal to be replaced and be otherwise acceptable to Buyer. Seller shall cooperate with Buyer in Buyer's arranging for alternative transportation to allow the Coal shipped from the alternate source to be delivered to Buyer at the Delivery Point at the same time and at the same Contract Price on an equivalent \$/mmBtu and SO₂ adjusted basis (if SO₂ adjustment is provided in the relevant Confirmations) as if delivery had been made to Buyer from the original Source. The Seller shall be solely responsible for any increased transportation, handling, storage and other costs, if any, incurred by Buyer directly resulting from Seller's provision of substitute Coal.

3.6 Taxes and Other Liabilities

Each Party shall use Commercially Reasonable Efforts to administer this Agreement and implement the provisions in accordance with the intent to minimize Taxes within the good faith parameters of the law. Seller shall be solely responsible as to any Transaction for all assessments, fees, costs, expenses and taxes (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, sale, use, loading and delivery of Coal to Buyer or in any way accrued or levied prior to the transfer of title to the Coal to Buyer, and including, without limitation, all severance taxes, royalties, black lung fees, reclamation fees and other costs, charges and liabilities. The risk of any change in such Third Party Impositions shall be borne solely by Seller unless a specific Transaction Confirmation expressly allows for pass through of such items. Buyer shall be solely responsible as to any Transaction for Third Party Impositions relating to the Coal accrued or levied at or after the transfer of title to the Coal to Buyer, including, but not limited to, sales or use tax if applicable. Notwithstanding any other provision of the Agreement to the contrary, if (i) a New Tax is imposed and (ii) Buyer or Seller would be responsible for such New Tax and (iii) such New Tax is (as a result of laws, regulations and applicable contracts of Buyer in effect as of the Effective Date of the New Tax) of the type that Buyer can pass directly through to, or be reimbursed by, another person or entity, Buyer shall pay or cause to be paid, or reimburse Seller if Seller has paid, all such New Taxes. If either Party is exempt from taxes, it shall provide a certificate of exemption or other reasonably satisfactory evidence of such exemption. Each Party shall use reasonable efforts to obtain and cooperate with the attempts by any other Party to obtain any pass through, exemption from or reduction of any Tax. Each Party shall indemnify, release, defend and hold harmless the other Party from and against any and all Third Party Impositions with respect to the Coal that are the responsibility of such Party pursuant to this Section 3.6.

3.7 Option Exercise

Unless otherwise expressly provided in the relevant Confirmation for an Option, in order to exercise the Option, the buyer of the Option ("Option Buyer") will, no later than 5:00 p.m. Eastern Prevailing Time on the Exercise Date for an Option, notify the seller of the Option ("Option Seller") either verbally or in writing, which notice will be irrevocable ("Notice of Exercise"), of the Option Buyer's exercise of its right or rights granted pursuant to the relevant Option. The Option Buyer may exercise the right or rights granted pursuant to the Option only by timely giving a Notice of Exercise to the Option Seller. If the Option is not timely exercised, it will expire and neither the Option Buyer nor the Option Seller will have any further rights or liabilities with respect to that Option. Once an Option under a Transaction has been timely and properly exercised, the physical purchase and sale of the Coal related thereto shall be governed by the terms of this Master Agreement and the relevant Confirmation, and the terms "Buyer" and "Seller" as used in this Master Agreement shall refer to the physical buyer and seller of the Coal, respectively, and not to the Option Buyer and Option Seller. Notice to Option Buyer or Option Seller, as the case may be, shall constitute notice to Buyer or Seller.

Article 4: Specifications, Weighing, Sampling and Analysis

4.1 Specifications

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

4.2 Unit Train or Truck Weighing

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

- a) Seller shall cause the Source to test, calibrate, and certify its scales at the Source approximately every six (6) months to maintain them at a scale accuracy in accordance with the guidelines outlined in the National Bureau of Standards Handbook #44. Seller shall use Commercially Reasonable Efforts to notify Buyer as soon as it knows the date and time for such testing and calibration, and Buyer shall have the right, but not the duty, to witness such testing, calibration, and certification of Seller's scales.
- b) If the scales at the Source are determined to be inoperative, if the Source is a Western Mine, then the weight of such coal delivered shall be determined by averaging the lading weight per railcar of the last five (5) trains of like equipment under this Agreement weighed at the Source prior to such breakdown. If less than five (5) trains of like equipment under this Agreement were weighed at the Source prior to the breakdown, the weight per railcar shall be determined by averaging the weight per railcar of the train(s) of like equipment under this Agreement weighed at the Source prior to the breakdown as well as the lading weight per

railcar of train(s) of like equipment under this Master Agreement first weighed at the Source after the scales are operable, so as to comprise a five (5) train weighted average. If the Source is an Eastern Mine, the weight of such coal delivered shall be determined by railroad weights.

- c) Buyer shall have the right to have a representative present at its own risk and expense at any and all times to observe weighing of the coal. If either Party should at any time question the accuracy of the scales at the Source, such Party may request a prompt test and adjustment of such track scales or batch weighing system at its expense by an entity mutually agreed upon by Buyer and Seller.

4.3 Barge and Vessel Weighing

Unless otherwise agreed by the Parties in the relevant Confirmation, Shipments delivered by barge(s) or vessel(s) shall be weighed at Seller's expense as determined by a certified belt scale (such certification to be not older than six (6) months from the date of loading) or if not available by draft survey taken at the Delivery Point prior to the departure of the barge(s) or vessel(s) from the Delivery Point at Seller's expense. The weights thereby determined (absent manifest error) will be the basis on which invoices will be rendered and payments made hereunder. All such draft surveys at the Delivery Point shall be conducted by an independent surveyor (certified commercial marine surveyor for vessels) experienced in the conduct of draft surveys selected by mutual agreement of the Parties, or failing agreement, by Seller unless otherwise stated in the relevant Confirmation.

4.4 Sampling and Analysis

- a) The Sampling Person, which shall be Seller, the Source or the Source's agent unless otherwise specified in the relevant Confirmation, shall cause a representative coal sample to be taken by mechanical sampler that is in working condition and that has been dynamically bias tested within twelve (12) months prior to delivery by an independent certified third party. If non-biased tested equipment is specifically authorized in a Confirmation, and in such event the Sampling Person is not able to obtain a sample with biased tested equipment in proper working condition, the Parties shall confer for purposes of reaching agreement as to an alternative means of sampling. Samples shall be taken on an "as-loaded" basis, and analyzed on an "as-received" basis and all sampling, sample preparation and analysis shall be performed in accordance with then current published applicable ASTM standards.
- b) Analysis shall be performed by the Analysis Person, which shall be an independent certified laboratory chosen by good faith agreement of the Parties. If the Parties fail to agree upon such laboratory, then (i) for PRB transactions, the Seller shall select the laboratory, (ii) for NYMEX transactions, the Buyer shall select the laboratory, or (iii) for all other product transaction, then each party shall select its own independent certified laboratory and the analyses of both laboratories shall be averaged and such average shall be conclusive and binding for all purposes, provided that the results obtained by the individual laboratories are within ASTM (interlaboratory) Reproducibility Limits; if the results are not within ASTM (interlaboratory) Reproducibility Limits, the analyses by the

independent laboratories shall be repeated. Samples shall be analyzed on an "as-received" basis in accordance with then current published applicable ASTM standards. The Sampling Person's samples of Coal representing each Shipment and the analysis thereof as set forth above, shall be used to determine quality adjustments pursuant to Article 5.1 and any rejection or suspension rights pursuant to Article 5.2 or 5.3. Each sample shall be divided into four (4) parts in accordance with then current ASTM standards and placed in separate airtight containers. One (1) part of each sample will be analyzed by the Analysis Person as determined pursuant to Article 4.4(b) above; one (1) part shall be retained by the Sampling Person for a period of forty-five (45) days (if Seller is not the Sampling Person) or shipped as Seller directs; one (1) part shall be retained by the Sampling Person for a period of forty-five (45) days (if Buyer is not the Sampling Person) or shipped as Buyer directs; and one (1) part shall be retained by the Sampling Person for a period of forty-five (45) days to be used for a referee analysis, if necessary.

- c) The Analysis Person shall perform a short proximate analysis on an "as-received" basis, which shall include total moisture, ash, Btu, sulfur and, other data as required by the applicable Confirmation. At the request of either Buyer or Seller, and at the expense of the requesting Party, additional analyses may be performed. The Sampling Person shall or shall cause the results of the short proximate analysis to be reported to the Buyer and Seller, along with train I.D. number, weight and shipping data ("Shipping Report") by fax, telephone (to be confirmed promptly by fax) or other electronic means as soon as available, but in any event within twenty-four (24) hours (forty-eight (48) hours for PRB Sources) of the completion of the loading of each Shipment. By notice to the Sampling Person within twenty-four (24) hours after delivery of the Shipping Report and in any event prior to unloading of the coal at the destination, Buyer or Seller may object to the analysis (the "Objecting Person"), and if so, the Sampling Person shall submit the retained sample to an independent testing laboratory selected by and unaffiliated with the Objecting Person for an independent analysis. If the results of the independent analysis are within ASTM (interlaboratory) Reproducibility Limits, the original short proximate, sodium, and any other specification analysis as required in the applicable Confirmation, as appropriate, shall control and the costs of the independent analysis shall be paid by the Objecting Person. If such results for any Specification are not within such Reproducibility Limits, the results of the independent analysis shall control and the costs of the independent analysis shall be borne by the non-Objecting Person. All analyses shall be performed in accordance with then current published applicable ASTM standards.

4.5 Representative Presence

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

Article 5: Quality Adjustments; Rejection and Suspension Rights

5.1 Quality Adjustments

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

5.2 Buyer's Rejection Rights

Unless otherwise specified in the relevant Confirmation, if any Shipment of Coal triggers any of the Rejection Limits specified in the Confirmation for a Transaction (a "Non-Conforming Shipment"), Buyer shall have the option, exercisable by notice to Seller within twenty-four (24) hours of Buyer's receipt of the Sampling Person's short proximate analysis and additional analysis, if any, of the Coal provided pursuant to Article 4.4 of either (i) rejecting such Non-Conforming Shipment at the Delivery Point or in route, but prior to unloading from Transporter's equipment or (ii) accepting any Non-Conforming Shipment with a Contract Price adjustment mutually agreed upon by the Parties in a Confirmation. If Buyer fails timely to exercise its rejection rights under this Article 5.2 as to a Shipment, Buyer shall be deemed to have waived such rights to reject with respect to that Shipment only. Buyer's failure to timely exercise such notice does not however, constitute a waiver of its right to any penalty adjustment provided for herein or in the relevant confirmation with respect to such Non-Conforming Shipment. If Buyer timely rejects the Non-Conforming Shipment, Seller shall be responsible for promptly transporting the rejected Coal to an alternative destination determined by Seller and, if applicable, promptly unloading such coal and shall reimburse Buyer for all reasonable costs and expenses associated with the transportation, storage, handling and removal of the Non-Conforming Shipment. Seller shall, at Buyer's election, replace the rejected coal within a reasonable period of time, provided that Buyer gives written notice to Seller of its desire for replacement coal within forty-eight (48) hours after rejection of the Non-Conforming Shipment. Notwithstanding anything to the contrary set forth herein, any claim by Buyer with respect to Coal sold hereunder or any penalty adjustment due hereunder shall be deemed waived by Buyer unless submitted to Seller in writing within thirty (30) days after delivery of such Coal.

5.3 Suspension Rights

If there are three (3) Non-Conforming Shipments, whether rejected or not, under a Transaction in any three (3) month period or if two (2) out of four (4) consecutive Shipments under a Transaction (with respect to barge coal the preceding test shall be

determined by one (1) or more rejectable barges being loaded in each of two (2) days of sequential Shipments under a given Transaction whether or not there are any intervening days without Shipments) are Non-Conforming Shipments, or should Seller fail to meet one or more Schedule 2 Periodic Performance Quality Limits as set forth in a Schedule 2 to a Confirmation, as the case may be, then Buyer may upon notice to Seller suspend the receipt of future Shipments (except Shipments already loaded or in transit to Buyer) under such Transaction. A waiver by Buyer of the suspension right for any one period shall not constitute a waiver for subsequent periods. If Seller, within ten (10) days of its receipt of such notice, provides reasonable assurances in writing to Buyer that future Shipments under the Transaction will conform to the Specifications and Buyer has accepted such assurances (such acceptance not to be unreasonably withheld), Shipments shall resume and any tonnage deficiencies shall be made up within the Term at Buyer's option. If (i) Seller fails to provide such acceptable assurances within such ten (10) day period, or (ii) after such assurances are provided and for a period of three (3) months thereafter, any Shipments of Coal trigger any of Buyer's rejection rights under Article 5.2 for the Rejection Limit parameter for which there was a prior suspension under such Transaction or should Seller fail to meet one (1) or more Schedule 2 Periodic Performance Quality Limits as set forth in a Schedule 2 to a Confirmation, as the case may be, then such failure shall constitute an Event of Default (as hereinafter defined) with respect to such Transaction.

Article 6: Settlements; Security

6.1 Billing and Payment

- a) Unless otherwise agreed by the Parties, after the end of each shipment month during the Term for each Transaction, Buyer and Seller shall provide the other, if necessary, with an invoice, setting forth, as appropriate,
 - (i) the aggregate Contract Price owed to Seller for the Coal actually delivered to Buyer at each Delivery Point during the applicable month;
 - (ii) any quality adjustments and supporting calculations determined pursuant to Article 5.1;
 - (iii) any transportation or other charges owed by Buyer or Seller to the other pursuant to this Master Agreement;
 - (iv) any liquidated damages payments pursuant to Article 8.4; and
 - (v) any Early Termination Payment pursuant to Article 8.3.

No later than ten (10) days after receipt of a Party's invoice or the 25th day of the month, which ever is later, (or if such day is not a Business Day, the immediately following Business Day), the receiving Party shall pay, by electronic transfer in immediately available United States funds, the amount set forth on such invoice along with the necessary information enabling reconciliation to the relevant shipment to the applicable payment address provided in Exhibit B. With regard to (iv) and (v) above, the Performing Party may, at its sole option, accelerate payments due them within three (3) Business Days after receipt of invoice. All past due payments shall bear interest at the Interest Rate from and including the date due to but excluding the date paid.

- b) With respect to financial bookout transactions, all such invoices shall provide for payment no later than ten (10) days after receipt of an invoice or on the 25th of the month of the scheduled delivery, whichever is later (or if such day is not a Business Day, the immediately following Business Day).
- c) The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller (or if such day is not a Business Day, the immediately following Business Day).
- d) If the receiving Party in good faith reasonably disputes an invoice, it shall provide a written explanation specifying in detail the basis for the dispute and pay any undisputed portion no later than the due date. If any amount disputed by the receiving Party is subsequently determined to be due, it shall be paid within five (5) days along with interest accrued at the Interest Rate from the original due date until the date paid. If after such determination any Party fails to pay amounts under this Master Agreement when due, unless such amount is excused by Force Majeure under Article 7 hereof, in addition to the rights and remedies provided in this Master Agreement, the aggrieved Party shall have the right to: (i) suspend performance under this Master Agreement until such amounts plus interest at the Interest Rate have been paid, and/or (ii) exercise any remedy available at law or in equity to enforce payment of such amount plus interest at the Interest Rate.

6.2 Netting and Setoff

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

6.3 Audit

Each Party shall maintain accurate records relating to Coal sales and purchases made pursuant to this Master Agreement or any Transactions hereunder. Such records shall be retained for a period of at least two (2) years after completion or termination of the relevant Transaction. Each Party (and its representatives) has the right, at its sole expense during normal working hours and upon reasonable advance notice, to examine the records of the other Party, but only to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement or a Transaction. If requested, a Party shall provide to the requesting Party statements evidencing the quantities of Coal delivered or received at the Delivery Point. Examination of records hereunder shall be limited to one examination per year for each Transaction. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statements and the payments thereof will be promptly made and shall bear interest calculated at the Interest Rate from the date the overpayment

or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made in writing, in reference hereto, prior to the lapse of two (2) years from the rendition thereof; and provided further, that for the purpose of such statement and payment objections, this Article will survive any termination of a Transaction or this Master Agreement.

6.4 Material Adverse Change

A Material Adverse Change occurs with respect to either Party or either Party's credit support provider if one exists, if (i) there is any material change in the condition (financial or otherwise), net worth, assets, properties or operations, or in economic conditions, which, taken as a whole, can reasonably be anticipated to impair the ability of such Party to fulfill its obligations; or (ii) there is reasonable grounds to believe that the creditworthiness of such Party has become unsatisfactory or its ability to perform under this Agreement has been materially impaired.

6.5 Performance Assurance

If a Material Adverse Change has occurred, the Party seeking assurance ("Requesting Party") may make a written request of the other Party ("Providing Party") to provide Performance Assurance in an amount determined in a commercially reasonable manner, and in a form acceptable to the Requesting Party. Upon receipt of the request, the Providing Party shall have three (3) Business Days to provide such Performance Assurances. If not provided, the Requesting Party will be entitled to the remedies set forth in Article 8. If the Providing Party provides Performance Assurance to the Requesting Party within three (3) Business Days, it is understood that the Providing Party shall not in fact have defaulted under this Agreement by incurring a Material Adverse Change. Performance Assurance is defined as (i) cash (ii) letters of credit, or (iii) such other form of security acceptable to the Requesting Party.

6.6 Financial Information

Periodically a Party shall have the right to request updated financial information from the other Party. Promptly upon the requesting Party executing Confidentiality undertakings if requested by the other Party, the other Party shall promptly furnish financial information required in order to verify credit worthiness.

Article 7: Force Majeure

7.1 Events of Force Majeure

If a Party to a Transaction is delayed in or prevented from performing, in whole or in part, any of its obligations under a Transaction due to acts of God, war, riots, civil insurrection, acts of the public enemy, strikes, lockouts, natural disasters, breakdown of or damage to necessary facilities or equipment, transportation delays caused by other events of Force Majeure, or other causes that are beyond the reasonable control and without the fault or negligence of the Party affected thereby and which by the exercise of due diligence, could not have been prevented or avoided by such Party or is unable in good faith to obtain a substitute therefore (such events being referred to herein as "Force Majeure"), and such Party gives oral notice and full details of the Force Majeure to the

other Party as soon as reasonably practicable after the occurrence of the event of Force Majeure (such notice to be confirmed in writing), then during the pendency of such Force Majeure but for no longer period, the obligations of the Parties under such affected Transaction (other than obligations to make payments then due) shall be suspended to the extent required by the event. The Party affected by the Force Majeure shall remedy the Force Majeure with all reasonable dispatch and will keep the other Party advised as to the continuance of the Force Majeure event; provided however, that this provision shall not require Seller to deliver, or Buyer to receive, the Coal at points other than the Delivery Point for the authorized Source including allowable substitutions under the Transaction. Force Majeure does not include: (i) the loss of Buyer's markets; (ii) a change in market conditions including the ability of the Seller to sell Coal at a higher price; (iii) Seller's inability to economically produce or obtain the Coal; (iv) Buyer or Buyer's customer to buy Coal at a lower price, whether or not foreseeable; or (v) regulatory or contractual disallowance of the pass-through of the costs of Coal or other related costs.

7.2 Termination under Force Majeure

If an event of complete or partial Force Majeure persists for a continuous period of sixty (60) days, then the Party not claiming Force Majeure shall have the option, upon three days' prior written notice, to terminate the affected Transaction to the extent affected and the associated obligations of the Parties thereunder (other than payment obligations for prior performance thereunder). In the event of a Force Majeure, delivery of the affected quantity of Coal shall not be made up except by mutual agreement of the Buyer and Seller.

7.3 Transactions Affected by Force Majeure

If Seller claims Force Majeure and is unable to meet all of its sales obligations under an affected Transaction and any other of its coal sales agreements involving coal of a similar type and quality as the Coal, or if Buyer claims Force Majeure and is unable to meet all of its purchase obligations under an affected Transaction and any other of its coal purchase agreements involving coal of a similar type and quality as the Coal, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated on a pro rata basis among the affected Transaction(s) and such other coal supply or purchase agreements involving Coal of the same type and quality as the Coal to the extent contractually permitted by such Transaction and agreements.

7.4 Discretion of Party Claiming Force Majeure

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

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

8.1 Events of Default

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

- a) the failure of Defaulting Party to pay when due any required payment and such failure is not remedied within three (3) Business Days after written notice thereof (provided the payment is not subject to a good faith dispute as described in Article 6.1 b));
- b) the failure of the Defaulting Party to comply with its other material obligations under a Transaction covered by this Master Agreement and such failure continues uncured for three (3) Business Days after written notice thereof, provided that if it shall be impracticable or impossible to remedy such failure within such three (3) Business Day period, the cure period shall be extended for an additional period reasonably necessary to remedy such failure subject to the condition that during the additional period, the Defaulting Party shall be diligently pursuing a remedy for the failure;
- c) the Defaulting Party or its Guarantor shall be subject to a Bankruptcy Proceeding;
- d) an event described in the last sentence of Article 5.3 has occurred with respect to a Transaction;
- e) any representation or warranty made by a Party herein shall prove to be untrue in any material respect when made;
- f) a Party suffers a Material Adverse Change as defined in Section 6.4 and fails to provide Performance Assurances as provided in Section 6.5;
- g) the failure of the Defaulting Party to comply with its other material obligations under this Master Agreement and such failure continues uncured for three (3) Business Days after written notice thereof, provided that if it shall be impracticable or impossible to remedy such failure within such three (3) Business Day period, the cure period shall be extended for an additional period reasonably necessary to remedy such failure subject to the condition that during the additional period, the Defaulting Party shall be diligently pursuing a remedy for the failure.
- h) (i) a default, event of default or other similar condition or event in respect to the Defaulting Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount, which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount.

- i) a Party is in default under any Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction. "Specified Transaction(s)" shall mean any obligation of a party to this Master Agreement incurred under any other agreement(s) between the parties to this Master Agreement, or instrument(s) or undertaking(s) issued or executed by one party to, or in favor of, the other party.

8.2 Early Termination

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

8.3 Early Termination Payment

If an Early Termination Date is established, the Non-Defaulting Party shall in good faith calculate its Gains or Losses, and Costs, resulting from the termination of the terminated Transaction(s), aggregate such Gains or Losses, and Costs, with respect to all terminated Transactions into a single net amount, and then notify the Defaulting Party of the net amount owed or owing. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within one (1) day of its receipt of such notice pay the net amount to the Non-Defaulting Party, including interest at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from such early termination, the Non-Defaulting Party shall pay the net amount to the Defaulting Party in accordance with Article 6.1 hereof. The Non-Defaulting Party shall determine its Gains or Losses, and Costs, as of the Early Termination Date, or, if that is not possible, at the

earliest date thereafter that is reasonably possible. If an Event of Default occurs, the Non-Defaulting Party may (at its election) set off any or all amounts which the Defaulting Party owes to the Non-Defaulting Party (or any Affiliates of the Non-Defaulting Party) under this Master Agreement or any other agreement(s) against any or all amounts which the Non-Defaulting Party (or any Affiliates of the Non-Defaulting Party) owes to the Defaulting Party under this Master Agreement and any other agreement(s) between the Parties. The Non-Defaulting Party shall use Commercially Reasonable Efforts to mitigate any costs and damages that it is entitled to hereunder and act at all times in a commercially reasonable manner. The Defaulting Party shall have the right to audit (through a third party independent auditor mutually agreed to by the Parties) the calculation of all such gains, losses and costs.

8.4 Remedies

The remedies set forth in this Article 8.4 shall be the Non-Defaulting Party's exclusive monetary remedies for the Defaulting Party's failure to perform under a Transaction prior to the Non-Defaulting Party's early termination of such Transaction due to an Event of Default pursuant to Article 8.1:

- a) As an alternative to the damages provision below, if the Parties mutually agree in writing, the Non-Defaulting Party may schedule deliveries or receipts, as the case may be, pursuant to such terms as the Parties agree in order to discharge some or all of the obligation to pay damages. In the absence of such agreement, the damages provision of this Section shall apply.
- b) Unless excused by Force Majeure or Buyer's failure to perform, if Seller fails to deliver the quantity of coal in accordance with the applicable Transaction and this Master Agreement, Seller shall pay to Buyer an amount for each ton of coal of such deficiency equal to (i) the market price at which Buyer is able, or at the time of Seller's breach, would be able (FOB Delivery Point) to purchase or otherwise receive comparable supplies of Coal of comparable quality on an equivalent $\$/\text{mmBtu}$, SO_2 adjusted basis ("Replacement Price") minus (ii) the Contract Price agreed to for the specific Transaction; except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.
- c) Unless excused by Force Majeure or Seller's failure to perform, if Buyer fails to accept delivery of the quantity of coal in accordance with the applicable Transaction and this Master Agreement, Buyer shall pay to Seller an amount for each ton of coal of such deficiency equal to (i) the Contract Price agreed to for the specific Transaction minus (ii) the market price at which Seller is able, or would be able (FOB Delivery Point), to sell or otherwise dispose of the coal at the time of Buyer's breach ("Sales Price"); except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.
- d) Both Parties shall be subject to a commercially reasonable good faith obligation to mitigate any damages hereunder.

- e) Payment of amounts, if any, determined under paragraph (b) or (c) of this Article 8.4 shall be made in accordance with Article 6.1. All such determinations shall be made in a commercially reasonable manner and the Non-Defaulting Party shall not be required to enter into any actual replacement transaction in order to determine the Replacement Price or Sales Price as appropriate.
- f) If a Party obligated to make a payment under this Section 8.4 timely makes such payment to the other Party, no failure to perform as described in this Section 8.4 shall constitute an Event of Default pursuant to Section 8.1.

8.5 Damages Stipulation

Each Party stipulates that the payment obligations set forth in this Article 8 for the damages incurred are a reasonable approximation of the anticipated harm or loss and acknowledges the difficulty of estimation or calculation of actual damages, and each Party hereby waives the right to contest such payments as unenforceable, an unreasonable penalty or otherwise.

8.6 Expenses

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

8.7 Limitation of Liability

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

Article 9: Arbitration

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding Arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. With respect to any arbitration, the number of arbitrators shall be three, each Party having the right to appoint one arbitrator who shall together then appoint a third neutral arbitrator within thirty (30) days in accordance with the rules. The third arbitrator shall be a person who has five years or more experience in the coal industry. None of the arbitrators shall have been previously employed by either Party or have any direct interest in either Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by both Parties. The place of arbitration hearings shall alternate between the office of Buyer and Seller, the first being held at Seller's office. It is expressly agreed that the arbitrators shall have no authority to award consequential, special, indirect, or exemplary, or punitive damages of any type under any circumstances regardless of whether such damages may be available under applicable law, or federal law, or under the Federal Arbitration Act, the Parties hereby waiving their rights, if any, to recover consequential, special, indirect, exemplary, and punitive damages with respect to this Master Agreement. Any award reached by the arbitrators may be vacated pursuant to Section 12 or modified pursuant to Section 13 of the Uniform Arbitration Act adopted in 1955, and amended on August 30, 1956. The Parties agree that all arbitration proceedings conducted hereunder and the decision of the arbitrators shall be kept confidential and not disclosed, except to Parties, affiliates, accountants, lawyers and regulatory bodies to the extent necessary to enforce the decision.

Article 10: Miscellaneous

10.1 Successors and Assigns; Assignment

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

and such Transactions. Any transfer in violation of this section shall be deemed null and void.

10.2 Warranties

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

10.3 Notices

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

10.4 Confidentiality

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

10.5 Governing Law

THIS MASTER AGREEMENT AND EACH TRANSACTION AND THE RIGHTS AND DUTIES OF THE PARTIES ARISING HEREFROM AND THEREFROM SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS.

10.6 Entire Agreement; Amendments; Interpretation

This Master Agreement, the Schedules, Annexes, Exhibits and Appendices hereto and made a part hereof, if any, and each Transaction, constitute the entire agreement between the Parties relating to the subject matter contemplated by this Master Agreement and supersedes any prior or contemporaneous agreements or representations affecting the same subject matter. Except for any matters which, in accordance with the express

provisions of this Agreement, may be resolved by verbal agreement between the Parties, no amendment, modification or change to this Master Agreement shall be enforceable unless reduced to a writing executed by the Party against whom such amendment, modification or change is sought to be enforced and specifically referencing this Master Agreement. The Parties acknowledge that each Party and its counsel have reviewed and revised this Master Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be used in interpretation of this Master Agreement.

10.7 Counterparts; Severability; Survival

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

10.8 Non-Waiver; Duty to Mitigate; No Partnership or Third Party Beneficiaries

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

10.9 Forward Contract

The Parties acknowledge and agree that all Transactions constitute "forward contracts" within the meaning of the United States Bankruptcy Code.

Article 11: Definitions

"Affiliate" means, with respect to any person, any other person (other than an individual) that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such person. For this purpose, **"control"** means the direct or indirect

ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

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

"ASTM" means the American Society for Testing and Materials.

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

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

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

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

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

"Buyer's Customer" means the party that Buyer has contracted to sell the Coal purchased from Seller under a Transaction.

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

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

"Coal Buyer" means Buyer.

"Coal Seller" means Seller.

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

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

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

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

"Cross Default Amount" means for ULH&P, \$50,000,000 (fifty million US dollars), and for CTPY means \$500,000.00 (five hundred thousand US dollars).

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

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

"Eastern Mine" means a coal mine that is located east of the Mississippi River.

"Exercise Date" means the agreed date (as specified in the relevant Confirmation for an Option) prior to or on which the Option buyer must notify the Option Seller that the Option Buyer has elected to purchase or sell, as applicable, the relevant Option Quantity, if any, under a Transaction. Unless otherwise specified in the Confirmation the Exercise Date will be on or before the first Business Day of the month preceding an Exercise Period

"Exercise Period" means the period of time covered by the exercise of an Option.

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

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

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

"Interest Rate" means, for any date, two percent over the per annum rate of interest equal to the prime lending rate as may from time to time be published in the *Wall Street Journal* under **"Money Rates"** provided the Interest Rate shall never exceed the maximum rate allowed by applicable law.

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

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

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

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

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

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

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

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

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

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

"Shipment" means, as applicable, one Unit Train load, one barge or vessel load, or the tonnage delivered by truck within a payment period, as set forth on the confirmation.

"SO₂" means sulfur dioxide and lbs. of SO₂ per mmBtu means sulfur dioxide per million Btu.

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

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

"Synfuel Sales Agreement" means the Synthetic Fuel and Coal Supply Agreement, dated as of March 11, 2004, between the Cincinnati Gas & Electric Company and Tyrone Synfuels, LP, as assigned to and assumed by The Union Light, Heat and Power Company, as amended from time to time.

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

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

"Ton" means 2,000 pounds.

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

"Transportation Specifications" means the agreement(s) made by Seller, Buyer or any Party's designee with its respective Transporter(s), as amended from time to time, covering the requirements for each Shipment, which agreements, including the timing and tonnage requirements thereunder, shall be no more restrictive than typical agreements for transport of Coal on rail lines, highways, vessels or barges transporting Coal to or from the Delivery Point(s) for third parties or to and from other delivery points in the vicinity of the Delivery Point. Such Transportation Specifications, or relevant portions therein, shall be made available upon request to the extent authorized within the relevant transportation agreement and shall be no more restrictive than typical agreements for transport of Coal on rail lines, highways, vessels or barges transporting Coal to or from Delivery Point(s) for third parties or to and from other delivery points in the vicinity of the Delivery Point.

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

"Tyrone" means Tyrone Synfuels, LP., a Delaware limited partnership.

"Tyrone Confirmation" means a coal transaction confirmation entered into under and pursuant to the Tyrone Master Agreement.

"Tyrone Master Agreement" means the Master Coal Purchase and Sale Agreement, dated as of the Effective Date between _____ and Tyrone.

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

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

"ULH&P" Union Light Heat & Power

By: VE Stroud

Name: VE Stroud

Title: Vice President

By: _____

Name: _____

Title: _____

Exhibit A - Master Coal Purchase and Sale Agreement

Confirmation

This Confirmation sets forth the binding agreement entered into between **The Union Light, Heat and Power Company ("ULH&P")** and _____, on the Trade Date set out below as to a Transaction (this "Transaction") regarding the sale/purchase of Coal under the following terms:

1). Commodity: Coal, as defined in the Master Agreement

2). Trade Date: _____

3). Product:

- _____ barge
- _____ barge
- _____ 12,500 btu , <1% Sulfur
- _____ 12,500 btu, Compliance
- _____ 12,500 btu, <1% Sulfur
- _____ 12,500 btu, Compliance
- _____ 12,000 btu, Compliance barge
- _____ 13,000 btu, 3.8# Sulfur barge
- _____ 13,000 btu, 3.0# Sulfur rail
- _____ , 12,200 btu, 6.0# Sulfur barge

4) Term: _____

5). Quantity/Tons: _____

6). Scheduling (Check One): _____ Per Master Agreement
_____ Other: _____

7): Nomination Period (Check One): ___ Monthly ___ Quarterly ___ Other: _____

8). Source(s): _____

9). Delivery Point (Check One): _____ F.O.B. railcar at the Source
_____ F.O.B. barge at the Source
_____ Other: _____

10). Contract Price: _____

11). Specifications (Check One): _____ Per Attached Schedule 1 (Standard)
_____ Per Attached Schedule 2 (Periodic Performance)

12). Sampling Person (Check One): _____ Per Master Agreement

_____ Other: _____

13) Analysis Person (Check One): _____ Per Master Agreement
_____ Other: _____

14) Payment (Check One): _____ Per Master Agreement
_____ Other _____

Formulas for Quality Adjustments:

Btu: _____

SO₂: _____

Government Imposition (check one): _____ Per Master Agreement
_____ Other _____

Other: _____

This letter constitutes a "Confirmation" as referred to in the Master Agreement specified below. This Confirmation supplements, forms part of, and is subject to the Master Coal Purchase and Sale Agreement dated _____, as it has or may be amended, and supplemented from time to time (the "Master Agreement") between the Coal Seller and Coal Buyer. All provisions contained in the Master Agreement govern this Confirmation to the extent not in conflict with the terms hereof. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

Please confirm that the foregoing correctly sets forth the terms of the agreement between you and us as to this Transaction by timely returning an executed copy of this letter by facsimile to (513) 419-5790. If you do not return this Confirmation or object to any of the terms stated herein within three (3) Business Days of your receipt of it, then in accordance with the Master Agreement this Confirmation shall be deemed correct, and binding and conclusive evidence of this Transaction. This Confirmation supercedes any broker confirmation concerning this Transaction.

The Union Light, Heat and Power Company

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

Schedule 1
Specifications

The Coal delivered hereunder shall conform to the following specifications on an "as received" basis, in accordance with ASTM standards for each shipment in a month:

<u>Specification</u>	<u>Monthly Weighted Average Guarantee</u>	<u>Shipment Reject Limits (per Barge)</u>
HEATING VALUE	____,____ btu/lb	< ____ btu/lb
MOISTURE	____%	> ____%
ASH	____%	> ____%
SULFUR	____%	> ____%
SULFUR DIOXIDE (SO ₂)	____ lb./mmbtu	> ____ lb./mmbtu
VOLATILES	____%	< ____%
CHLORINE	____%	> ____%
SIZE:		
-- Top size (inches)*	< ____"	> ____"
-- Fines (% by wgt) passing 1/4" screen	< ____%	> ____%
GRINDABILITY (HGI)	____	< ____
<u>ASH FUSION TEMPERATURE (°F) (ASTM D1857)</u>		
<u>REDUCING ATMOSPHERE</u>		
Softening (H=W)	> ____ °F	< ____ °F

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

- Other: _____
- 13) Analysis Person (Check One): Per Master Agreement
Other: _____
- 14) Payment (Check One): Per Master Agreement
Other: _____
-

Formulas for Quality Adjustments:

Btu: _____
SO₂: _____

Government Imposition (check one): Per Master Agreement
Other: _____

Other: _____

This letter constitutes a "Confirmation" as referred to in the Master Agreement specified below. This Confirmation supplements, forms part of, and is subject to the Master Coal Purchase and Sale Agreement dated _____, as it has or may be amended, and supplemented from time to time (the "Master Agreement") between the Coal Seller and Coal Buyer. All provisions contained in the Master Agreement govern this Confirmation to the extent not in conflict with the terms hereof. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

Please confirm that the foregoing correctly sets forth the terms of the agreement between you and us as to this Transaction by timely returning an executed copy of this letter by facsimile to (513) 419-5790. If you do not return this Confirmation or object to any of the terms stated herein within three (3) Business Days of your receipt of it, then in accordance with the Master Agreement this Confirmation shall be deemed correct, and binding and conclusive evidence of this Transaction. This Confirmation supercedes any broker confirmation concerning this Transaction.

The Union Light, Heat and Power Company

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

Schedule 1
Specifications

The Coal delivered hereunder shall conform to the following specifications on an "as received" basis, in accordance with ASTM standards for each shipment in a month:

<u>Specification</u>	<u>Monthly Weighted Average Guarantee</u>	<u>Shipment Reject Limits (per Barge)</u>
HEATING VALUE	____, ____ btu/lb	< ____ btu/lb
MOISTURE	____%	> ____%
ASH	____%	> ____%
SULFUR	____%	> ____%
SULFUR DIOXIDE (SO ₂)	____ lb./mmbtu	> ____ lb./mmbtu
VOLATILES	____%	< ____%
CHLORINE	____%	> ____%
SIZE:		
-- Top size (inches)*	< ____"	> ____"
-- Fines (% by wgt) passing 1/4" screen	< ____%	> ____%
GRINDABILITY (HGI)	____	< ____
<u>ASH FUSION TEMPERATURE (°F) (ASTM D1857)</u>		
<u>REDUCING ATMOSPHERE</u>		
Softening (H=W)	> ____ °F	< ____ °F

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

Schedule 2

(PERIODIC PERFORMANCE) TO CONFIRMATION: SPECIFICATIONS

_____ **PRODUCT**

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

<u>Specification</u>	<u>Periodic Performance Quality</u>		<u>Shipment Rejection Limits (Barge / Unit Train)</u>
	<u>Limit</u>	<u>Period**</u>	
BTU/LB.	_____	_____	< _____
MOISTURE	_____ %	_____	> _____ %
ASH	_____ %	_____	> _____ %
SULFUR	_____ %	_____	> _____ %
SULFUR DIOXIDE (SO ₂)	_____	_____	> _____ lb./MMBTU
VOLATILE	_____ %	_____	< _____ %
Size (2" x 0"):			
-- Top size (inches)*	< _____ "	<u>N/A</u>	> _____ "
-- Fines (% by wgt)	< _____ %	<u>N/A</u>	> _____ %
Passing 1/4" screen			
GRINDABILITY (HGI)	_____	<u>N/A</u>	< _____
<u>ASH FUSION TEMPERATURE (°F) (ASTM D1857)</u>			
<u>REDUCING ATMOSPHERE</u>			
Initial Deformation	_____	<u>N/A</u>	min. _____
Softening (H=W)	_____	<u>N/A</u>	min. _____
Softening (H=1/2W)	_____	<u>N/A</u>	min. _____
Fluid	_____	<u>N/A</u>	min. _____

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

**A = Annual, Q = Quarterly, M = Month

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

Exhibit B – Master Coal Purchase and Sale Agreement

NOTICES AND PAYMENT

NOTICES & CORRESPONDENCE

The Union Light, Heat and Power Company

overnight mail: 221 E. Fourth Street, EA 606

regular mail: 139 E. Fourth Street, EA 606

Cincinnati, OH 45202

Attn: Contract Administration

Attn:

Fax No.: (513) 419-6927

Fax No.:

Phone No.: (513) 419-5683

Phone No.:

INVOICES

The Union Light, Heat and Power Company

1000 E. Main Street

Plainfield, IN 46168

Attn.: Supervisor, Settlements and Reporting

Fax No.: (317) 838 1023

Phone No.:

PAYMENTS

The Union Light, Heat and Power Company

Attn: PNC Bank

The Union Light, Heat and Power

Attn:

Company

ABA Routing No.:

ABA Routing No.:

Account No.:

Account No.:

Confirmation:

Phone No.: 1

or to such other address as ULH&P or _____ shall from time to time designate by notice properly addressed and given to the other Party.

ASSIGNMENT AND ASSUMPTION AGREEMENT
WITH RESPECT TO
COAL SALE CONFIRMATIONS

This ASSIGNMENT AND ASSUMPTION AGREEMENT WITH RESPECT TO COAL SALE CONFIRMATIONS (this "Agreement") is entered into as of 12/30/05, 2005 by and between The Cincinnati Gas & Electric Company, an Ohio corporation ("CG&E"), and The Union Light, Heat and Power Company, a Kentucky corporation ("ULH&P").

WHEREAS, CG&E is a party to a Master Coal Purchase and Sale Agreement by and between CG&E and _____ dated May 3, 2004 ("CG&E Master Agreement"); and

WHEREAS, ULH&P is a party to a Master Coal Purchase and Sale Agreement by and between CG&E and _____ dated March 30, 2005 ("ULH&P Master Agreement"); and

WHEREAS, CG&E and _____ have entered into a Confirmation dated March 1, 2004 ("March 1, 2004 Confirmation"), for 6# sulfur coal, _____ under the CG&E Master Agreement; and

WHEREAS, CG&E and _____ have entered into an Amended and Restated Confirmation Executed March 30, 2005 ("March 30, 2005 Confirmation", and together with the March 1, 2004 Confirmation, the "Confirmations") under the CG&E Master Agreement; and

WHEREAS, CG&E intends to transfer to ULH&P CG&E's interest in Unit 2 of East Bend Generating Station ("East Bend Unit 2"); and

WHEREAS, CG&E desires to assign the Confirmations to ULH&P; and

WHEREAS, ULH&P desires to assume and take assignment of the Confirmations from CG&E.

NOW, THEREFORE, in consideration of the premises and the agreements and covenants herein contained, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I
ASSIGNMENT AND ASSUMPTION

Section 1.1 Assignment and Assumption. Effective upon the execution and delivery hereof by the parties hereto, (a) CG&E hereby unconditionally and irrevocably

assigns, sells, transfers and conveys to ULH&P all of its right, title, interest, obligations and liabilities in, to and under the Confirmations, and (b) ULHP hereby unconditionally and irrevocably accepts such assignment and hereby unconditionally and irrevocably assumes and agrees to pay and otherwise undertake, observe, perform and discharge in accordance with their terms all of CG&E's obligations and liabilities under the Confirmations arising from and after the date of this Agreement.

ARTICLE II MISCELLANEOUS

Section 2.1 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (including by facsimile) to the other party hereto.

Section 2.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, exclusive of any conflict of laws provisions thereof that would refer jurisdiction to the laws of another state.

Section 2.3 Entire Agreement; Parties in Interest. (a) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and there are no agreements, understandings, representations or warranties between the parties other than those set forth or referred to herein.

(b) This Agreement is not intended to confer upon any party not a party hereto (and their successors and assigns) any rights or remedies hereunder.

Section 2.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 2.5 Headings; Interpretation. The article and section headings contained in this Agreement are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Agreement. All references to Articles or Sections contained herein mean Articles or Sections of this Agreement, unless otherwise stated. All capitalized terms defined herein are equally applicable to both the singular and plural forms of such terms. The terms "hereof," "herein," "hereunder," "hereby" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all the exhibits hereto) and not to any particular provision of this Agreement. The words "including" and words of similar import when used in this Agreement shall mean "including without limitation" unless the context otherwise requires or unless otherwise specified.

Section 2.6 Amendments and Waivers. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by the party against whom enforcement of any such modification or amendment is sought. Any party hereto

may, only by an instrument in writing, waive compliance by the other party hereto with any term or provision of this Agreement on the part of such other party to be performed or complied with. The waiver by any party hereto of a breach of any term of this Agreement shall not be construed as a waiver of any subsequent breach.

Section 2.7 Further Assurances. Subject to the terms and conditions of this Agreement, at any time or from time to time after the execution and delivery hereof, at either party's request and without further consideration, the other party hereto shall execute and deliver to such requesting party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as such requesting party may reasonably request in order to effectuate more fully the purposes of this Agreement.

Section 2.8 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given (a) on the day when delivered personally or by facsimile transmission (with confirmation), (b) on the next business day when delivered by a nationally recognized overnight delivery service, or (c) five (5) business days after deposited as registered or certified mail (return receipt requested), in each case, postage prepaid, addressed to the recipient party at its address set forth below (or to such other addresses and facsimile numbers for a party as shall be specified by like notice; provided, however, that any notice of a change of address or facsimile number shall be effective only upon receipt thereof):

(i)

If to CGE, to:

The Cincinnati Gas & Electric Company
139 East Fourth Street
Cincinnati, OH 45202
Attention: Vice President, Fuel Procurement and
Origination
Facsimile No.: 513-419-5690


(ii)

If to ULHP, to:

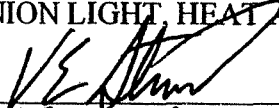
The Union Light, Heat and Power Company
139 East Fourth Street
Cincinnati, OH 45202
Attention: Vice President, Fuel Procurement and
Origination
Facsimile No.: 513-419-5690

IN WITNESS WHEREOF, each of the parties hereto has caused this Assignment and Assumption Agreement with respect to Control Agreement to be executed on its behalf by its respective officer thereunto duly authorized, all as of the day and year first above written.

THE CINCINNATI GAS & ELECTRIC COMPANY

By: 
Name: Daniel L. Branstetter
Title: VP Commercial Fuels
Date: 12-30-05

THE UNION LIGHT, HEAT AND POWER COMPANY

By: 
Name: VE Strand
Title: Vice President
Date: 12/27/05

CONSENT
to
Assignment and Assumption Agreement
with respect to
Coal Sale Confirmations

This CONSENT to Assignment and Assumption Agreement with respect to Coal Sale Confirmations (this "Consent") is executed and delivered by [] a [] corporation ([] as of 12:00 p.m., Eastern Standard Time, [] 2005 (the "Effective Date").

WHEREAS, The Cincinnati Gas & Electric Company ("CG&E") is a party to a Master Coal Purchase and Sale Agreement by and between CG&E and [] dated May 3, 2004 ("CG&E Master Agreement"); and

WHEREAS, The Union Light, Heat and Power Company ("ULH&P") is a party to a Master Coal Purchase and Sale Agreement by and between CG&E and [] dated [], 2005 ("ULH&P Master Agreement"); and

WHEREAS, CG&E and [] have entered into a Confirmation dated March 1, 2004 ("March 1, 2004 Confirmation") under the CG&E Master Agreement; and

WHEREAS, CG&E and [] have entered into an Amended and Restated Confirmation Executed March 30, 2005 ("March 30, 2005 Confirmation", and together with the March 1, 2004 Confirmation, the "Confirmations") under the CG&E Master Agreement; and

WHEREAS, CG&E intends to transfer to ULH&P CG&E's interest in Unit 2 of East Bend Generating Station ("East Bend Unit 2"); and

WHEREAS, CG&E desires to assign the Confirmations to ULH&P; and

WHEREAS, ULH&P desires to assume and take assignment of the Confirmations from CG&E.

WHEREAS, CG&E and ULH&P are executing and delivering that certain Assignment and Assumption Agreement with respect to Coal Sale Confirmations (the "Assignment and Assumption Agreement"), under which CG&E is assigning to ULH&P, and ULH&P is accepting and assuming, all of CG&E's rights and obligations under the Control Agreement (collectively, the "Proposed Assignment");

WHEREAS, the [] and ULH&P desire that the Confirmations be governed by the ULH&P Master Agreement; and

WHEREAS, CG&E desires to be discharged and released from its obligations and liabilities from and after the Proposed Assignment; and

WHEREAS, _____ has determined to execute and deliver this Consent to recognize the Proposed Assignment and to effect such discharge and release.

NOW, THEREFORE, by its signature below, in consideration of the transactions contemplated by the Assignment and Assumption Agreement, including without limitation the assumption by ULH&P of the obligations of CG&E under the Control Agreement in accordance with its terms, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, _____ hereby:

1. grants its complete, unconditional and irrevocable consent to the terms and provisions of the Assignment and Assumption Agreement, including without limitation the Proposed Assignment, and further agrees that the Confirmations shall henceforth be incorporated into and made part of the ULH&P Master Agreement;
2. releases CG&E from all duties and liabilities that arise under the Control Agreement from and after the Effective Date; and
3. agrees that, to its knowledge as of the date hereof, CG&E is in full compliance with, and not in violation or breach of or default (including with respect to any event that with notice or lapse of time or both would constitute a violation or breach or default) under any provision of the Confirmations.

Notwithstanding the foregoing, however, neither this Consent nor the Assignment and Assumption Agreement shall constitute a waiver of any claim against or the release of any liability of CG&E arising under the Control Agreement prior to the Effective Date by either Tyrone or the Bank.

This Consent shall inure to the benefit of CG&E and ULH&P and their respective successors and assigns and is binding upon _____ and its respective successors and assigns.

No amendment or waiver of any provision hereof shall be effective unless in writing and signed by each of CG&E, ULH&P, and _____.

This Consent shall be governed by Ohio law, excluding its conflicts of law provisions.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the undersigned entity has caused this Consent to Assignment and Assumption Agreement with respect to Control Agreement to be executed on its behalf by its officer thereunto duly authorized, all as of the day and year first above written.

OXFORD MINING COMPANY, INC.

By: _____
Name: _____

Title: _____

Date: 12/20/05

**FIRST AMENDMENT TO THE
MASTER COAL PURCHASE AND SALE AGREEMENT**

This **FIRST AMENDMENT TO THE MASTER COAL PURCHASE AND SALE AGREEMENT** ("First Amendment") is made and entered into this 27th day of December, 2005, by and between _____ an Ohio corporation, and Tyrone Synfuels, L.P., a Delaware limited partnership ("TSLP").

WITNESSETH:

WHEREAS, the parties entered in a Master Coal Purchase and Sale Agreement dated October 11, 2004 ("Master Agreement"); and

WHEREAS, the parties wish to amend the Master Agreement as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants of the parties hereto, the parties agree as follows:

1. AMENDMENTS. The Master Agreement is amended effective January 1, 2006 as follows:

- a. Section 3.5 is amended by replacing the reference to "CG&E" in line six with "ULH&P";
- b. Section 10.4 is amended by replacing the reference to "CG&E" in line three with "ULH&P";
- c. Article 11: Definitions is amended by adding to the end of the definition for *Coal, Transportation and Consulting Agreement* the phrase, "as assigned to and assumed by ULH&P.";
- d. Article 11: Definitions is further amended by inserting into the definition of *Synfuel Sales Agreement* after the word "CG&E," the phrase, "as assigned to and assumed by ULH&P and";
- e. Article 11: Definitions is further amended by replacing the reference to "CG&E" in the definition of *Tyrone's Consultant* with "ULH&P".
- f. Article 11: Definitions is further amended by inserting the defined term: "ULH&P" means The Union Light, Heat & Power Company.

5. GOVERNING LAW. This First Amendment shall be construed and interpreted in accordance with the laws of the State of Ohio.

6. ADDITIONAL DOCUMENTS. All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this First Amendment.

7. ENTIRE AGREEMENT AND SUCCESSORS IN INTEREST. The Master Agreement and this First Amendment contains the entire agreement between the parties



hereto with regard to the matters set forth therein and shall be binding upon and inure to the benefit of the successors and assigns of each.

8. **CAPITALIZED TERMS.** Any capitalized terms set forth herein that are not defined herein shall be given their meanings as set forth in the Master Agreement.

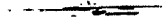
IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed as of the Effective Date set forth herein above.

Tyrone Synfuels, L.P.

By: CQ, Inc., its General Partner

By: _____
Title: _____
Date: 1/11/06

Clark D. Harrison
By: Clark D. Harrison
Title: President
Date: 12-22-05



MASTER COAL PURCHASE AND SALE AGREEMENT

This Master Coal Purchase and Sale Agreement ("Master Agreement") is entered into this 11th day of October, 2004, (the "Effective Date") by and between Tyrone Synfuels, LP. ("Tyrone") and

TYRONE and (each a "Party" and collectively, the "Parties") may, but shall not be required to, enter into Transactions which will be governed by this Master Agreement. Any capitalized term used herein and not defined in the Article in which it appears shall have the meaning set forth in Article 11 hereof. TYRONE and hereby agree as follows:

Article 1: Transactions

1.1 Procedures

A Transaction shall be entered into by means of an offer to buy or sell Coal or to buy or sell an Option by either Party to the other Party (through their respective agents and/or representatives) in writing or in the absence of a writing, a telephone conversation that may be recorded (each Party hereby consents to such recording of such conversations without any further notice) and the acceptance of such offer by the offeree (through their respective agents and/or representatives) in such telephone conversation, if such telephone conversation contains all of the terms and conditions relevant to the Transaction that would be required in a Confirmation as set forth in Section 1.2 below. Any such Transaction shall be evidenced by a Confirmation (as hereinafter defined) as provided herein. Each Party agrees that it is legally bound by the terms of a Transaction, as supplemented by this Master Agreement, from the moment on a particular date ("Trade Date") those terms (whether orally or otherwise) are agreed. As a material part of the consideration for entering into this Master Agreement, if the telephonic transaction contains all of the necessary criteria to be considered a Transaction as provided above, each of the Parties agrees not to contest or assert (and hereby releases any right to) any defense to the (i) validity or enforceability of telephonic Transactions entered into by them under laws relating to whether certain agreements are to be in writing or signed by such Party to be thereby bound so long as such telephonic Transactions contain all of the necessary criteria to be considered a valid Transaction as provided above, or (ii) the authority of any employee or representative. The manner of entering into a Transaction as described in this Article 1 is not intended to be the exclusive manner of forming a binding agreement between the Parties regarding a Transaction. Facsimile signatures shall be considered as original signatures for all purposes under this Master Agreement.

1.2 Confirmations

- a) The selling party ("Transaction Seller") will execute and send via facsimile to the buying party ("Transaction Buyer"), promptly after agreement as to a Transaction, a written confirmation memorializing the Transaction ("Confirmation"), which is substantially in the form attached hereto as Exhibit A. Each Confirmation will be promptly executed by the Transaction Buyer, if it accurately sets forth the terms and conditions of the Transaction agreed by the Parties, and returned to the Transaction Seller within three (3) Business Days of receipt. Each Confirmation will list the

terms and conditions for the agreed Transaction not otherwise covered by this Master Agreement, including, without limitation, Transaction Buyer and Transaction Seller, Transaction Quantity, Term, Nomination Period(s), Scheduling, Transaction Price, Source(s), Delivery Point(s), Loading Capacities, Specifications, Periodic Performance Qualities (if needed, set forth in Schedule 2 of Exhibit A), Rejection Limits, premiums and/or penalties, and, if the Transaction includes an Option, Option Quantity, Exercise Date(s), Strike Price(s) and any other relevant terms agreed to by the Parties to the Transaction, including any exceptions to the Master Agreement. Should Transaction Seller fail to issue a Confirmation within three (3) Business Days after agreement to a Transaction then the Transaction Buyer may issue a Confirmation which will evidence the Transaction.

- b) Absent a manifest error, a Confirmation sent as provided above (by the "Sending Party") shall be considered correct upon receipt by the other party ("Receiving Party") unless within three (3) Business Days after the Receiving Party's receipt of the Confirmation, the Receiving Party notifies the Sending Party that the Confirmation contains a bona fide error and that a correction is necessary, in which case the Confirmation as revised by the Receiving Party and agreed to by the Sending Party to correct the error shall be the definitive Confirmation for the Transaction. If any dispute shall arise as to whether an error exists, the parties to the Transaction will, in good faith, make Commercially Reasonable Efforts to resolve the dispute. If the dispute, regarding an issue that either Party deems material, cannot be resolved within ten (10) Business Days after Receiving Party's notice of the dispute, either Party may refer the dispute to Arbitration pursuant to Article 9 hereof. Notwithstanding the above, if the Receiving Party has not timely notified the Sending Party of a bona fide error in the Confirmation or has not otherwise replied in writing to the Confirmation within three (3) Business Days after its receipt, absent manifest error, the Confirmation shall be deemed correct and binding and conclusive evidence of the Transaction agreed to by the Parties. A Party's failure to send a Confirmation or a Party's failure to reply to or return a Confirmation shall not invalidate any otherwise valid Transaction.
- c) Except as otherwise provided in this Master Agreement, in the event of any inconsistency between the provisions of this Master Agreement and the terms set forth in a Confirmation, such Confirmation will prevail for the purpose of the relevant Transaction. Terms and conditions set forth in any fully executed Confirmation that are inconsistent with any recorded oral terms and conditions shall be resolved in favor of the fully executed confirmation, unless there is a manifest error. Terms and conditions set forth in a Confirmation that is not executed by both Parties that are inconsistent with any recorded oral terms and conditions shall be resolved in favor of the recorded oral terms and conditions.
- d) Each Confirmation shall supplement and form a part of this Master Agreement and shall be read and construed together with this Master Agreement and all other applicable Annexes and Exhibits, which constitute a single integrated agreement between the Parties, and all the Transactions contemplated in Confirmations shall be integral parts of this Master Agreement. All Transactions are entered into in reliance

on the fact that this Master Agreement and all Confirmations form a single agreement between the Parties.

1.3 Representations

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

- a) The execution, delivery and performance of this Master Agreement and the relevant Transaction have been duly authorized by all necessary corporate or other organizational action on its part and do not violate or conflict with any law applicable to it, its organizational documents or any order or judgment of a court or other agency of government applicable to it or its assets;
- b) Its obligations under this Master Agreement and each Transaction are legally valid and binding obligations, enforceable in accordance with their terms;
- c) It has any and all necessary governmental and other third party permits, approvals and licenses required in connection with the execution, delivery and performance of this Master Agreement and any Transaction; and
- d) There are no Bankruptcy Proceedings pending or being contemplated by it or, to its knowledge, threatened against it.
- e) There are no Legal Proceedings pending or, to its knowledge, threatened against it or any of its Affiliates that are likely to affect the legality, validity, enforceability or its ability to perform its obligations under this Master Agreement and each Transaction.

Article 2: Term

The term of this Master Agreement (the "Master Agreement Term") shall commence on the Effective Date and shall remain in effect until the date that is the earlier of (i) thirty (30) days after the date on which either Party gives written notice to the other Party of its election to terminate this Master Agreement (the "Elective Termination Date"), and (ii) the date on which the Synfuel Sales Agreement ~~terminates~~ (the "Synfuel Termination Date"). Following any termination pursuant to clause (i) above, this Master Agreement and any relevant Confirmations shall remain in effect with respect to any Transaction(s) entered into on or prior to the Elective Termination Date until each Party has fulfilled all of its obligations with respect to all such Transaction(s), or, if earlier, the Synfuel Termination Date. All Confirmations with respect to any Transaction(s) entered into prior to the Synfuel Termination Date shall terminate on the Synfuel Termination Date. No deliveries of Coal shall be made to Tyrone following the Synfuel Termination Date. No termination of this Master Agreement and such Confirmations shall affect or excuse the performance of any Party under any provision of this Master Agreement that by its terms survives any such termination, including, without limitation, Tyrone's obligation to pay for Coal delivered on or before the termination date.

Article 3: Obligations

3.1 Obligations for Purchase and Sale of Coal

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

3.2 Scheduling

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

3.3 Delivery

a) Barge or vessel deliveries

For barge or vessel deliveries, the Coal shall be delivered to Buyer FOB barge or vessel at the Delivery Point. Title to and risk of loss of the Coal will pass to Buyer upon each barge or vessel being fully loaded and trimmed. Buyer or its Transporter shall furnish suitable barges or vessels for delivery of the Coal. Such barges or vessels shall be compatible with the Source's coal loading facilities to be utilized by Seller and shall be properly prepared to receive coal. Coal haulage or transportation equipment provided by either Seller or Buyer, as the case may be, shall be clean, dry and suitable for the transportation of coal. Seller shall arrange for and pay all costs of transporting the Coal to the Delivery Point and handling and loading the Coal into barges or vessels to the proper draft and proper distribution in such barges or vessels. Buyer shall arrange for and pay all costs for transporting the Coal by barge or vessel from and after the Delivery Point to its destination. If the Delivery Point at a Source is such that the Coal will have been transported by barge or vessel prior to delivery, then title to and risk of loss of the Coal will pass to Buyer upon the earlier to occur of (i) the safe and proper mooring of the barge(s) or vessel(s) at the Delivery Point loading dock or discharge point or (ii) other transfer of the custody and control of the barge(s) or vessel(s) to Buyer or Buyer's Transporter.

b) Rail or truck deliveries

Unless otherwise specifically provided in the Confirmation, for rail or truck deliveries, the Coal shall be delivered to Buyer FOB Unit Train(s) or FOB truck(s) at the Delivery Point. For truck deliveries, title to and risk of loss of the Coal will pass to Buyer as each truck is loaded or unloaded, as appropriate. For rail deliveries, title to and risk of loss of the Coal will pass to Buyer upon completion of loading all railcars in each Unit Train and release of the Unit Train to the railroad. Buyer shall

furnish suitable Unit Trains or trucks for loading and delivery of the Coal. Such Unit Trains or trucks shall be compatible with the coal loading facilities utilized by the Seller and shall be properly prepared to receive coal. Coal haulage or transportation equipment provided by either Seller or Buyer, as the case may be, shall be clean, dry and suitable for the transportation of coal. If the Delivery Point is at a Source such that the Coal will have been transported by Unit Train or truck prior to delivery, then title to and risk of loss of the Coal will pass to Buyer upon the earlier to occur of (i) the safe and proper placement of the Unit Trains or trucks at the Delivery Point or (ii) other transfer of the custody and control of the Unit Trains or trucks to Buyer or Buyer's Transporter.

c) **Shipping notices**

For each delivery by vessel, barge, truck, or rail, Seller shall supply Buyer with a shipping notice which shall include the vessel name, train or barge or truck number, Source from which supplied, tonnage shipped, shipping date, destination (which shall in all cases be CG&E's receiving facilities for the East Bend Station located in Rabbit Hash, Ky.), along with the analysis information required under Section 4.1 and any other information reasonably required by Buyer and agreed to by Seller. Seller shall within two (2) Business Days of loading or prior to arrival of the vessel, barge, truck or train (as applicable) at the destination following loading of such shipment (whichever comes first), send the shipping notice to Buyer by telecopy or other means as agreed to between Buyer and Seller. Notwithstanding the obligations to send shipping notices as provided in the previous sentence, Seller agrees to use Commercially Reasonable Efforts to send any such notices. Seller shall also provide Buyer Bill of Lading for each delivery which shall include name of Seller, contract number or purchase order number, train, truck or barge number, date loaded and Seller's delivered weights. Seller shall, as soon as is reasonably possible, notify Buyer of any loading deficiencies or delays in loading via telephone or other electronic means. The Parties agree that some of Tyrone's obligations hereunder may be performed by Tyrone's Consultant pursuant to the Coal, Transportation and Consulting Agreement. Nevertheless, Tyrone shall remain liable for all of Tyrone's obligations hereunder and Tyrone shall indemnify and hold harmless from and against any and all claims made by Tyrone's Consultant against Seller

d) **Demurrage**

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

e) **Freeze Control**

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

f) **Buyer's Administrative Obligation**

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

- (i) Buyer shall inform Seller at least twenty-four (24) hours in advance of arrival of each Unit Train, truck, barge or vessel at the Source's mine/loadout of the identification number of the Unit Train truck, barge or vessel, identification of Buyer's Customer, and destination of such Unit Train truck, barge or vessel.
- (ii) The loading of such Unit Train shall be in accordance with the loading provisions provided to Seller herein unless Buyer notified Seller in advance of different loading provisions and such different loading provisions are in general accordance with general operating parameters in the mine's/loadout's region, and do not, in Seller's reasonable opinion, impose an undue operating or economic burden on Seller.
- (iii) All information to be supplied by Seller to Buyer under this Master Agreement including but not limited to analysis, weights, train manifest and invoicing information shall be supplied to Buyer and Buyer shall be responsible for transmitting such information to Buyer's Customer.

3.4 Title and Indemnity

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

3.5 Substitute Coal

Unless otherwise restricted by the subject Confirmation, Seller shall, by giving timely notice as provided in Section 3.2 above, have the option, subject to Buyer's approval, not to be unreasonably withheld, to provide the Coal from any alternate source Seller may select. Any such substituted Coal must comply with all Specifications for the Coal to be replaced and be otherwise acceptable to Buyer and if Tyrone is the Buyer, such substituted coal shall be subject to a test burn at CG&E's East Bend Station. Seller shall cooperate with Buyer in Buyer's arranging for alternative transportation to allow the Coal shipped from the alternate source to be delivered to Buyer at the Delivery Point at the same time and at the same Contract Price on an equivalent \$/mmBtu and SO₂ adjusted

basis (if SO₂ adjustment is provided in the relevant Confirmations) as if delivery had been made to Buyer from the original Source. The Seller shall be solely responsible for any increased transportation, handling, storage and other costs, if any, incurred by Buyer directly resulting from Seller's provision of substitute Coal.

3.6 Taxes and Other Liabilities

Each Party shall use Commercially Reasonable Efforts to administer this Agreement and implement the provisions in accordance with the intent to minimize Taxes within the good faith parameters of the law. Seller shall be solely responsible as to any Transaction for all assessments, fees, costs, expenses and taxes (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, sale, use, loading and delivery of Coal to Buyer or in any way accrued or levied prior to the transfer of title to the Coal to Buyer, and including, without limitation, all severance taxes, royalties, black lung fees, reclamation fees and other costs, charges and liabilities. The risk of any change in such Third Party Impositions shall be borne solely by Seller unless a specific Transaction Confirmation expressly allows for pass through of such items. Buyer shall be solely responsible as to any Transaction for Third Party Impositions relating to the Coal accrued or levied at or after the transfer of title to the Coal to Buyer, including, but not limited to, sales or use tax if applicable. Notwithstanding any other provision of the Agreement to the contrary, if (i) a New Tax is imposed and (ii) Buyer or Seller would be responsible for such New Tax and (iii) such New Tax is (as a result of laws, regulations and applicable contracts of Buyer in effect as of the Effective Date of the New Tax) of the type that Buyer can pass directly through to, or be reimbursed by, another person or entity, Buyer shall pay or cause to be paid, or reimburse Seller if Seller has paid, all such New Taxes. If either Party is exempt from taxes, it shall provide a certificate of exemption or other reasonably satisfactory evidence of such exemption. Each Party shall use reasonable efforts to obtain and cooperate with the attempts by any other Party to obtain any pass through, exemption from or reduction of any Tax. Each Party shall indemnify, release, defend and hold harmless the other Party from and against any and all Third Party Impositions with respect to the Coal that are the responsibility of such Party pursuant to this Section 3.6.

3.7 Option Exercise

Unless otherwise expressly provided in the relevant Confirmation for an Option, in order to exercise the Option, the buyer of the Option ("Option Buyer") will, no later than 5:00 p.m. Eastern Prevailing Time on the Exercise Date for an Option, notify the seller of the Option ("Option Seller") either verbally or in writing, which notice will be irrevocable ("Notice of Exercise"), of the Option Buyer's exercise of its right or rights granted pursuant to the relevant Option. The Option Buyer may exercise the right or rights granted pursuant to the Option only by timely giving a Notice of Exercise to the Option Seller. If the Option is not timely exercised, it will expire and neither the Option Buyer nor the Option Seller will have any further rights or liabilities with respect to that Option. Once an Option under a Transaction has been timely and properly exercised, the physical purchase and sale of the Coal related thereto shall be governed by the terms of this Master Agreement and the relevant Confirmation, and the terms "Buyer" and "Seller" as used in this Master Agreement shall refer to the physical buyer and seller of the Coal,

respectively, and not to the Option Buyer and Option Seller. Notice to Option Buyer or Option Seller, as the case may be, shall constitute notice to Buyer or Seller.

Article 4: Specifications, Weighing, Sampling and Analysis

4.1 Specifications

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

4.2 Unit Train or Truck Weighing

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

- a) Seller shall cause the Source to test, calibrate, and certify its scales at the Source approximately every six (6) months to maintain them at a scale accuracy in accordance with the guidelines outlined in the National Bureau of Standards Handbook #44. Seller shall use Commercially Reasonable Efforts to notify Buyer as soon as it knows the date and time for such testing and calibration, and Buyer shall have the right, but not the duty, to witness such testing, calibration, and certification of Seller's scales.
- b) If the scales at the Source are determined to be inoperative, if the Source is a Western Mine, then the weight of such coal delivered shall be determined by averaging the lading weight per railcar of the last five (5) trains of like equipment under this Agreement weighed at the Source prior to such breakdown. If less than five (5) trains of like equipment under this Agreement were weighed at the Source prior to the breakdown, the weight per railcar shall be determined by averaging the weight per railcar of the train(s) of like equipment under this Agreement weighed at the Source prior to the breakdown as well as the lading weight per railcar of train(s) of like equipment under this Master Agreement first weighed at the Source after the scales are operable, so as to comprise a five (5) train weighted average. If the Source is an Eastern Mine, the weight of such coal delivered shall be determined by railroad weights.
- c) Buyer shall have the right to have a representative present at its own risk and expense at any and all times to observe weighing of the coal. If either Party should at any time question the accuracy of the scales at the Source, such Party may request a prompt test and adjustment of such track scales or batch weighing system at its expense by an entity mutually agreed upon by Buyer and Seller.

4.3 Barge and Vessel Weighing

Unless otherwise agreed by the Parties in the relevant Confirmation, Shipments delivered by barge(s) or vessel(s) shall be weighed at Seller's expense as determined by a certified belt scale (such certification to be not older than six (6) months from the date of loading)

or if not available by draft survey taken at the Delivery Point prior to the departure of the barge(s) or vessel(s) from the Delivery Point at Seller's expense. The weights thereby determined (absent manifest error) will be the basis on which invoices will be rendered and payments made hereunder. All such draft surveys at the Delivery Point shall be conducted by an independent surveyor (certified commercial marine surveyor for vessels) experienced in the conduct of draft surveys selected by mutual agreement of the Parties, or failing agreement, by Seller unless otherwise stated in the relevant Confirmation.

4.4 Sampling and Analysis

- a) The Sampling Person, which shall be Seller, the Source or the Source's agent unless otherwise specified in the relevant Confirmation, shall cause a representative coal sample to be taken by mechanical sampler that is in working condition and that has been dynamically bias tested within twelve (12) months prior to delivery by an independent certified third party. If non-biased tested equipment is specifically authorized in a Confirmation, and in such event the Sampling Person is not able to obtain a sample with biased tested equipment in proper working condition, the Parties shall confer for purposes or reaching agreement as to an alternative means of sampling. Samples shall be taken on an "as-loaded" basis, and analyzed on an "as-received" basis and all sampling, sample preparation and analysis shall be performed in accordance with then current published applicable ASTM standards.
- b) Analysis shall be performed by the Analysis Person, which shall be an independent certified laboratory chosen by good faith agreement of the Parties. If the Parties fail to agree upon such laboratory, then (i) for transactions, the Seller shall select the laboratory, (ii) for transactions, the Buyer shall select the laboratory, or (iii) for all other product transaction, then each party shall select its own independent certified laboratory and the analyses of both laboratories shall be averaged and such average shall be conclusive and binding for all purposes, provided that the results obtained by the individual laboratories are within ASTM (interlaboratory) Reproducibility Limits; if the results are not within ASTM (interlaboratory) Reproducibility Limits, the analyses by the independent laboratories shall be repeated. Samples shall be analyzed on an "as-received" basis in accordance with then current published applicable ASTM standards. The Sampling Person's samples of Coal representing each Shipment and the analysis thereof as set forth above, shall be used to determine quality adjustments pursuant to Article 5.1 and any rejection or suspension rights pursuant to Article 5.2 or 5.3. Each sample shall be divided into four (4) parts in accordance with then current ASTM standards and placed in separate airtight containers. One (1) part of each sample will be analyzed by the Analysis Person as determined pursuant to Article 4.4(b) above; one (1) part shall be retained by the Sampling Person for a period of forty-five (45) days (if Seller is not the Sampling Person) or shipped as Seller directs; one (1) part shall be retained by the Sampling Person for a period of forty-five (45) days (if Buyer is not the Sampling Person) or shipped as Buyer directs; and one (1) part shall be retained by the Sampling Person for a period of forty-five (45) days to be used for a referee analysis, if necessary.

- c) The Analysis Person shall perform a short proximate analysis on an "as-received" basis, which shall include total moisture, ash, Btu, sulfur and, other data as required by the applicable Confirmation. At the request of either Buyer or Seller, and at the expense of the requesting Party, additional analyses may be performed. The Sampling Person shall or shall cause the results of the short proximate analysis to be reported to the Buyer and Seller, along with train I.D. number, weight and shipping data ("Shipping Report") by fax, telephone (to be confirmed promptly by fax) or other electronic means as soon as available, but in any event within twenty-four (24) hours (forty-eight (48) hours for PRB Sources) of the completion of the loading of each Shipment. By notice to the Sampling Person within twenty-four (24) hours after delivery of the Shipping Report and in any event prior to unloading of the coal at the destination, Buyer or Seller may object to the analysis (the "Objecting Person"), and if so, the Sampling Person shall submit the retained sample to an independent testing laboratory selected by and unaffiliated with the Objecting Person for an independent analysis. If the results of the independent analysis are within ASTM (interlaboratory) Reproducibility Limits, the original short proximate, sodium, and any other specification analysis as required in the applicable Confirmation, as appropriate, shall control and the costs of the independent analysis shall be paid by the Objecting Person. If such results for any Specification are not within such Reproducibility Limits, the results of the independent analysis shall control and the costs of the independent analysis shall be borne by the non-Objecting Person. All analyses shall be performed in accordance with then current published applicable ASTM standards.

4.5 Representative Presence

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

Article 5: Quality Adjustments; Rejection and Suspension Rights

5.1 Quality Adjustments

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

5.2 Buyer's Rejection Rights

Unless otherwise specified in the relevant Confirmation, if any Shipment of Coal triggers any of the Rejection Limits specified in the Confirmation for a Transaction (a "Non-

Conforming Shipment"), Buyer shall have the option, exercisable by notice to Seller within twenty-four (24) hours of Buyer's receipt of the Sampling Person's short proximate analysis and additional analysis, if any, of the Coal provided pursuant to Article 4.4 of either (i) rejecting such Non-Conforming Shipment at the Delivery Point or in route, but prior to unloading from Transporter's equipment or (ii) accepting any Non-Conforming Shipment with a Contract Price adjustment mutually agreed upon by the Parties in a Confirmation. If Buyer fails timely to exercise its rejection rights under this Article 5.2 as to a Shipment, Buyer shall be deemed to have waived such rights to reject with respect to that Shipment only. Buyer's failure to timely exercise such notice does not however, constitute a waiver of its right to any penalty adjustment provided for herein or in the relevant confirmation with respect to such Non-Conforming Shipment. If Buyer timely rejects the Non-Conforming Shipment, Seller shall be responsible for promptly transporting the rejected Coal to an alternative destination determined by Seller and, if applicable, promptly unloading such coal and shall reimburse Buyer for all reasonable costs and expenses associated with the transportation, storage, handling and removal of the Non-Conforming Shipment. Seller shall, at Buyer's election, replace the rejected coal within a reasonable period of time, provided that Buyer gives written notice to Seller of its desire for replacement coal within forty-eight (48) hours after rejection of the Non-Conforming Shipment. Notwithstanding anything to the contrary set forth herein, any claim by Buyer with respect to Coal sold hereunder or any penalty adjustment due hereunder shall be deemed waived by Buyer unless submitted to Seller in writing within thirty (30) days after delivery of such Coal.

5.3 Suspension Rights

If there are three (3) Non-Conforming Shipments, whether rejected or not, under a Transaction in any three (3) month period or if two (2) out of four (4) consecutive Shipments under a Transaction (with respect to barge coal the preceding test shall be determined by one (1) or more rejectable barges being loaded in each of two (2) days of sequential Shipments under a given Transaction whether or not there are any intervening days without Shipments) are Non-Conforming Shipments, or should Seller fail to meet one or more Schedule 2 Periodic Performance Quality Limits as set forth in a Schedule 2 to a Confirmation, as the case may be, then Buyer may upon notice to Seller suspend the receipt of future Shipments (except Shipments already loaded or in transit to Buyer) under such Transaction. A waiver by Buyer of the suspension right for any one period shall not constitute a waiver for subsequent periods. If Seller, within ten (10) days of its receipt of such notice, provides reasonable assurances in writing to Buyer that future Shipments under the Transaction will conform to the Specifications and Buyer has accepted such assurances (such acceptance not to be unreasonably withheld), Shipments shall resume and any tonnage deficiencies shall be made up within the Term at Buyer's option. If (i) Seller fails to provide such acceptable assurances within such ten (10) day period, or (ii) after such assurances are provided and for a period of three (3) months thereafter, any Shipments of Coal trigger any of Buyer's rejection rights under Article 5.2 for the Rejection Limit parameter for which there was a prior suspension under such Transaction or should Seller fail to meet one (1) or more Schedule 2 Periodic Performance Quality Limits as set forth in a Schedule 2 to a Confirmation, as the case

may be, then such failure shall constitute an Event of Default (as hereinafter defined) with respect to such Transaction.

Article 6: Settlements; Security

6.1 Billing and Payment

- a) Unless otherwise agreed by the Parties, after the end of each shipment month during the Term for each Transaction, Buyer and Seller shall provide the other, if necessary, with an invoice, setting forth, as appropriate,
- (i) the aggregate Contract Price owed to Seller for the Coal actually delivered to Buyer at each Delivery Point during the applicable month;
 - (ii) any quality adjustments and supporting calculations determined pursuant to Article 5.1;
 - (iii) any transportation or other charges owed by Buyer or Seller to the other pursuant to this Master Agreement;
 - (iv) any liquidated damages payments pursuant to Article 8.4; and
 - (v) any Early Termination Payment pursuant to Article 8.3.

No later than ten (10) days after receipt of a Party's invoice or the 25th day of the month, which ever is later, (or if such day is not a Business Day, the immediately following Business Day), the receiving Party shall pay, by electronic transfer in immediately available United States funds, the amount set forth on such invoice along with the necessary information enabling reconciliation to the relevant shipment to the applicable payment address provided in Exhibit B. With regard to (iv) and (v) above, the Performing Party may, at its sole option, accelerate payments due them within three (3) Business Days after receipt of invoice. All past due payments shall bear interest at the Interest Rate from and including the date due to but excluding the date paid.

- b) With respect to financial bookout transactions, all such invoices shall provide for payment no later than ten (10) days after receipt of an invoice or on the 25th of the month of the scheduled delivery, whichever is later (or if such day is not a Business Day, the immediately following Business Day).
- c) The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller (or if such day is not a Business Day, the immediately following Business Day).
- d) If the receiving Party in good faith reasonably disputes an invoice, it shall provide a written explanation specifying in detail the basis for the dispute and pay any undisputed portion no later than the due date. If any amount disputed by the receiving Party is subsequently determined to be due, it shall be paid within five (5) days along with interest accrued at the Interest Rate from the original due date until the date paid. If after such determination any Party fails to pay amounts under this Master Agreement when due, unless such amount is excused by Force Majeure under Article 7 hereof, in addition to the rights and remedies provided in this Master Agreement, the aggrieved Party shall have the right to: (i) suspend performance under this Master Agreement until such amounts plus interest at the Interest Rate have been paid, and/or

(ii) exercise any remedy available at law or in equity to enforce payment of such amount plus interest at the Interest Rate.

6.2 Netting and Setoff

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

6.3 Audit

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

6.4 Material Adverse Change

A Material Adverse Change occurs with respect to either Party or either Party's credit support provider if one exists, if (i) there is any material change in the condition (financial or otherwise), net worth, assets, properties or operations, or in economic conditions, which, taken as a whole, can reasonably be anticipated to impair the ability of such Party to fulfill its obligations; or (ii) there is reasonable grounds to believe that the creditworthiness of such Party has become unsatisfactory or its ability to perform under this Agreement has been materially impaired.

6.5 Performance Assurance

If a Material Adverse Change has occurred, the Party seeking assurance ("Requesting Party") may make a written request of the other Party ("Providing Party") to provide

Performance Assurance in an amount determined in a commercially reasonable manner, and in a form acceptable to the Requesting Party. Upon receipt of the request, the Providing Party shall have three (3) Business Days to provide such Performance Assurances. If not provided, the Requesting Party will be entitled to the remedies set forth in Article 8. If the Providing Party provides Performance Assurance to the Requesting Party within three (3) Business Days, it is understood that the Providing Party shall not in fact have defaulted under this Agreement by incurring a Material Adverse Change. Performance Assurance is defined as (i) cash (ii) letters of credit, or (iii) such other form of security acceptable to the Requesting Party.

6.6 Financial Information

Periodically a Party shall have the right to request updated financial information from the other Party. Promptly upon the requesting Party executing Confidentiality undertakings if requested by the other Party, the other Party shall promptly furnish financial information required in order to verify credit worthiness.

Article 7: Force Majeure

7.1 Events of Force Majeure

If a Party to a Transaction is delayed in or prevented from performing, in whole or in part, any of its obligations under a Transaction due to acts of God, war, riots, civil insurrection, acts of the public enemy, strikes, lockouts, natural disasters, breakdown of or damage to necessary facilities or equipment, transportation delays caused by other events of Force Majeure, or other causes that are beyond the reasonable control and without the fault or negligence of the Party affected thereby and which by the exercise of due diligence, could not have been prevented or avoided by such Party or is unable in good faith to obtain a substitute therefore (such events being referred to herein as "Force Majeure"), and such Party gives oral notice and full details of the Force Majeure to the other Party as soon as reasonably practicable after the occurrence of the event of Force Majeure (such notice to be confirmed in writing), then during the pendency of such Force Majeure but for no longer period, the obligations of the Parties under such affected Transaction (other than obligations to make payments then due) shall be suspended to the extent required by the event. The Party affected by the Force Majeure shall remedy the Force Majeure with all reasonable dispatch and will keep the other Party advised as to the continuance of the Force Majeure event; provided however, that this provision shall not require Seller to deliver, or Buyer to receive, the Coal at points other than the Delivery Point for the authorized Source including allowable substitutions under the Transaction. Force Majeure does not include: (i) the loss of Buyer's markets; (ii) a change in market conditions including the ability of the Seller to sell Coal at a higher price; (iii) Seller's inability to economically produce or obtain the Coal; (iv) Buyer or Buyer's customer to buy Coal at a lower price, whether or not foreseeable; or (v) regulatory or contractual disallowance of the pass-through of the costs of Coal or other related costs.

7.2 Termination under Force Majeure

If an event of complete or partial Force Majeure persists for a continuous period of sixty (60) days, then the Party not claiming Force Majeure shall have the option, upon three

days' prior written notice, to terminate the affected Transaction to the extent affected and the associated obligations of the Parties thereunder (other than payment obligations for prior performance thereunder). In the event of a Force Majeure, delivery of the affected quantity of Coal shall not be made up except by mutual agreement of the Buyer and Seller.

7.3 Transactions Affected by Force Majeure

If Seller claims Force Majeure and is unable to meet all of its sales obligations under an affected Transaction and any other of its coal sales agreements involving coal of a similar type and quality as the Coal, or if Buyer claims Force Majeure and is unable to meet all of its purchase obligations under an affected Transaction and any other of its coal purchase agreements involving coal of a similar type and quality as the Coal, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated on a pro rata basis among the affected Transaction(s) and such other coal supply or purchase agreements involving Coal of the same type and quality as the Coal to the extent contractually permitted by such Transaction and agreements.

7.4 Discretion of Party Claiming Force Majeure

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

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

8.1 Events of Default

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

- a) the failure of Defaulting Party to pay when due any required payment and such failure is not remedied within three (3) Business Days after written notice thereof (provided the payment is not subject to a good faith dispute as described in Article 6.1 b));
- b) the failure of the Defaulting Party to comply with its other material obligations under a Transaction covered by this Master Agreement and such failure continues uncured for three (3) Business Days after written notice thereof, provided that if it shall be impracticable or impossible to remedy such failure within such three (3) Business Day period, the cure period shall be extended for an additional period reasonably necessary to remedy such failure subject to the condition that during the additional period, the Defaulting Party shall be diligently pursuing a remedy for the failure;
- c) the Defaulting Party or its Guarantor shall be subject to a Bankruptcy Proceeding;
- d) an event described in the last sentence of Article 5.3 has occurred with respect to a Transaction;

- e) any representation or warranty made by a Party herein shall prove to be untrue in any material respect when made;
- f) a Party suffers a Material Adverse Change as defined in Section 6.4 and fails to provide Performance Assurances as provided in Section 6.5;
- g) the failure of the Defaulting Party to comply with its other material obligations under this Master Agreement and such failure continues uncured for three (3) Business Days after written notice thereof, provided that if it shall be impracticable or impossible to remedy such failure within such three (3) Business Day period, the cure period shall be extended for an additional period reasonably necessary to remedy such failure subject to the condition that during the additional period, the Defaulting Party shall be diligently pursuing a remedy for the failure.
- h) (i) a default, event of default or other similar condition or event in respect to the Defaulting Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount, which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount.
- i) a Party is in default under any Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction. "Specified Transaction(s)" shall mean any obligation of a party to this Master Agreement incurred under any other agreement(s) between the parties to this Master Agreement, or instrument(s) or undertaking(s) issued or executed by one party to, or in favor of, the other party.

8.2 Early Termination

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

clause (iii), this Master Agreement and all Transactions under it shall automatically terminate and the Early Termination Date shall be established by the Non-Defaulting Party. If notice of an Early Termination Date is given under this Article 8.2, the Early Termination Date will occur on the designated date, whether or not the relevant Event(s) of Default is then continuing. Any rights of a Non-Defaulting Party under this Article 8.2 shall be in addition to such Non-Defaulting Party's other rights under this Article 8.

8.3 Early Termination Payment

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

8.4 Remedies

The remedies set forth in this Article 8.4 shall be the Non-Defaulting Party's exclusive monetary remedies for the Defaulting Party's failure to perform under a Transaction prior to the Non-Defaulting Party's early termination of such Transaction due to an Event of Default pursuant to Article 8.1:

- a) As an alternative to the damages provision below, if the Parties mutually agree in writing, the Non-Defaulting Party may schedule deliveries or receipts, as the case may be, pursuant to such terms as the Parties agree in order to discharge some or all of the obligation to pay damages. In the absence of such agreement, the damages provision of this Section shall apply.
- b) Unless excused by Force Majeure or Buyer's failure to perform, if Seller fails to deliver the quantity of coal in accordance with the applicable Transaction and this Master Agreement, Seller shall pay to Buyer an amount for each ton of coal of such

deficiency equal to (i) the market price at which Buyer is able, or at the time of Seller's breach, would be able (FOB Delivery Point) to purchase or otherwise receive comparable supplies of Coal of comparable quality on an equivalent ϕ /mmBtu, SO₂ adjusted basis ("Replacement Price") minus (ii) the Contract Price agreed to for the specific Transaction; except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.

- c) Unless excused by Force Majeure or Seller's failure to perform, if Buyer fails to accept delivery of the quantity of coal in accordance with the applicable Transaction and this Master Agreement, Buyer shall pay to Seller an amount for each ton of coal of such deficiency equal to (i) the Contract Price agreed to for the specific Transaction minus (ii) the market price at which Seller is able, or would be able (FOB Delivery Point), to sell or otherwise dispose of the coal at the time of Buyer's breach ("Sales Price"); except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.
- d) Both Parties shall be subject to a commercially reasonable good faith obligation to mitigate any damages hereunder.
- e) Payment of amounts, if any, determined under paragraph (b) or (c) of this Article 8.4 shall be made in accordance with Article 6.1. All such determinations shall be made in a commercially reasonable manner and the Non-Defaulting Party shall not be required to enter into any actual replacement transaction in order to determine the Replacement Price or Sales Price as appropriate.
- f) If a Party obligated to make a payment under this Section 8.4 timely makes such payment to the other Party, no failure to perform as described in this Section 8.4 shall constitute an Event of Default pursuant to Section 8.1.

8.5 Damages Stipulation

Each Party stipulates that the payment obligations set forth in this Article 8 for the damages incurred are a reasonable approximation of the anticipated harm or loss and acknowledges the difficulty of estimation or calculation of actual damages, and each Party hereby waives the right to contest such payments as unenforceable, an unreasonable penalty or otherwise.

8.6 Expenses

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

8.7 Limitation of Liability

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS MASTER AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN

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

Article 9: Arbitration

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding Arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. With respect to any arbitration, the number of arbitrators shall be three, each Party having the right to appoint one arbitrator who shall together then appoint a third neutral arbitrator within thirty (30) days in accordance with the rules. The third arbitrator shall be a person who has five years or more experience in the coal industry. None of the arbitrators shall have been previously employed by either Party or have any direct interest in either Party or the subject matter of the arbitration, unless such conflict is express acknowledged and waived in writing by both Parties. The place of arbitration hearings shall alternate between the office of Buyer and Seller, the first being held at Seller's office. It is expressly agreed that the arbitrators shall have no authority to award consequential, special, indirect, or exemplary, or punitive damages of any type under any circumstances regardless of whether such damages may be available under applicable law, or federal law, or under the Federal Arbitration Act, the Parties hereby waiving their rights, if any, to recover consequential, special, indirect, exemplary, and punitive damages with respect to this Master Agreement. Any award reached by the arbitrators may be vacated pursuant to Section 12 or modified pursuant to Section 13 of the Uniform Arbitration Act adopted in 1955, and amended on August 30, 1956. The Parties agree that all arbitration proceedings conducted hereunder and the decision of the arbitrators shall be kept confidential and not disclosed, except to Parties, affiliates, accountants, lawyers and regulatory bodies to the extent necessary to enforce the decision.

Article 10: Miscellaneous

10.1 Successors and Assigns; Assignment

This Master Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. However, no Party shall assign this Master Agreement or any Transaction or any of its rights or obligations hereunder or

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

10.2 Warranties

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

10.3 Notices

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

10.4 Confidentiality

No Party shall disclose, without the prior written consent of the other Party, the terms of any Transaction to a third party (other than a Party's and its Affiliates' employees, lenders, counsel, Tyrone's Consultant, CG&E or accountants) except in order to comply with any applicable law, order, regulation or exchange rule; provided, each Party shall

notify the other Party of any proceeding of which it is aware which may result in disclosure and use Commercially Reasonable Efforts to prevent or limit the disclosure.

10.5 Governing Law

THIS MASTER AGREEMENT AND EACH TRANSACTION AND THE RIGHTS AND DUTIES OF THE PARTIES ARISING HEREFROM AND THEREFROM SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS.

10.6 Entire Agreement; Amendments; Interpretation

This Master Agreement, the Schedules, Annexes, Exhibits and Appendices hereto and made a part hereof, if any, and each Transaction, constitute the entire agreement between the Parties relating to the subject matter contemplated by this Master Agreement and supersedes any prior or contemporaneous agreements or representations affecting the same subject matter. Except for any matters which, in accordance with the express provisions of this Agreement, may be resolved by verbal agreement between the Parties, no amendment, modification or change to this Master Agreement shall be enforceable unless reduced to a writing executed by the Party against whom such amendment, modification or change is sought to be enforced and specifically referencing this Master Agreement. The Parties acknowledge that each Party and its counsel have reviewed and revised this Master Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be used in interpretation of this Master Agreement.

10.7 Counterparts; Severability; Survival

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

10.8 Non-Waiver; Duty to Mitigate; No Partnership or Third Party Beneficiaries

No waiver by any Party of any of its rights with respect to any other Party or with respect to any matter or default arising in connection with this Master Agreement shall be construed as a waiver of any subsequent right, matter or default whether of a like kind or different nature. Any waiver shall be in writing signed by the waiving Party. Each Party agrees that it has a duty to mitigate damages. Except as otherwise set forth in the Preamble to this Master Agreement, nothing contained in this Master Agreement or in

any Transaction shall be construed or constitute any Party as the employee, agent, partner, joint venturer or contractor of any other Party. This Master Agreement and each Transaction is made and entered into for the sole protection and legal benefit of the Parties, and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Master Agreement or any Transaction.

10.9 Forward Contract

The Parties acknowledge and agree that all Transactions constitute "forward contracts" within the meaning of the United States Bankruptcy Code.

10.10 Tyrone's Consultant. Pursuant to the Coal, Transportation and Consulting Agreement, Tyrone has retained Tyrone's Consultant as its consultant for purposes of entering into Confirmations pursuant to this Agreement, exercising any of Tyrone's Options to purchase Coal, scheduling deliveries under this Master Agreement and applicable Confirmations, and generally administering day-to-day activities under this Master Agreement and related Confirmations on behalf of Tyrone. [shall be entitled to rely on Confirmations executed by Tyrone's Consultant and instructions from Tyrone's Consultant with respect to the exercise of Tyrone's Options pursuant to Confirmations entered into between Buyer and Seller, scheduling deliveries of Coal, and other matters in connection with the day-to-day administration of this Master Agreement as being binding on Buyer.

Article 11: Definitions

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

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

"ASTM" means the American Society for Testing and Materials.

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

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

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

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

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

"Buyer's Customer" means the party that Buyer has contracted to sell the Coal purchased from Seller under a Transaction.

"CG&E" means The Cincinnati Gas & Electric Company

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

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

"Coal Buyer" means Buyer.

"Coal Seller" means Seller.

"Coal, Transportation and Consulting Agreement" means the Coal, Transportation and Consulting Agreement, dated as of March 11, 2004 by and among Tyrone and CG&E.

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

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

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

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

"Cross Default Amount" means for TYRONE, \$50,000,000 (fifty million US dollars), and for CTPY means \$2,500,000 (two million five hundred thousand US dollars).

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

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

"Eastern Mine" means a coal mine that is located east of the Mississippi River.

"Exercise Date" means the agreed date (as specified in the relevant Confirmation for an Option) prior to or on which the Option buyer must notify the Option Seller that the Option Buyer has elected to purchase or sell, as applicable, the relevant Option Quantity, if any, under a Transaction. Unless otherwise specified in the Confirmation the Exercise Date will be on or before the first Business Day of the month preceding an Exercise Period. **"Exercise Period"** means the period of time covered by the exercise of an Option. **"FOB"** shall have the meaning given to such term in the Uniform Commercial Code of the State of New York.

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

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

"Interest Rate" means, for any date, two percent over the per annum rate of interest equal to the prime lending rate as may from time to time be published in the *Wall Street Journal* under **"Money Rates"** provided the Interest Rate shall never exceed the maximum rate allowed by applicable law.

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

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

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

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

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

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

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

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

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

be the Seller for sampling purposes and the Sampling Person shall be deemed to be the Buyer for analysis purposes.

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

"Shipment" means, as applicable, one Unit Train load, one barge or vessel load, or the tonnage delivered by truck within a payment period, as set forth on the confirmation.

"SO₂" means sulfur dioxide and lbs. of SO₂ per mmBtu means sulfur dioxide per million Btu.

"Synfuel Sales Agreement" means the Solid Synthetic Fuel Sales Agreement, dated as of March 11, 2004, between Tyrone and CG&E, as amended from time to time.

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

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

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

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

"Ton" means 2,000 pounds.

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

"Transportation Specifications" means the agreement(s) made by Seller, Buyer or any Party's designee with its respective Transporter(s), as amended from time to time, covering the requirements for each Shipment, which agreements, including the timing and tonnage requirements thereunder, shall be no more restrictive than typical agreements for transport of Coal on rail lines, highways, vessels or barges transporting Coal to or from the Delivery Point(s) for third parties or to and from other delivery points in the vicinity of the Delivery Point. Such Transportation Specifications, or relevant portions therein, shall be made available upon request to the extent authorized within the relevant transportation agreement and shall be no more restrictive than typical agreements for transport of Coal on rail lines, highways, vessels or barges transporting Coal to or from Delivery Point(s) for third parties or to and from other delivery points in the vicinity of the Delivery Point.

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

"Tyrone's Consultant" means CG&E.

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

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

"TYRONE" TYRONE SYNFUELS, LP

By: Clark D. Harrison

Name: Clark D. Harrison

Title: President CQ Inc.
General Partner

"

By: _____

Name: _____

Title: _____

Exhibit A - Master Coal Purchase and Sale Agreement

Confirmation

This Confirmation sets forth the binding agreement entered into between **Tyrone Synfuels, LP.** ("TYRONE") and _____, on the Trade Date set out below as to a Transaction (this "Transaction") regarding the sale/purchase of Coal under the following terms:

1). Commodity: Coal, as defined in the Master Agreement

2). Trade Date: _____

3). Product (Check One and Delete the Others):

- _____ barge
- _____ barge
- _____ 12,500 btu , <1% Sulfur
- _____ 12,500 btu, Compliance
- _____ 12,500 btu, <1% Sulfur
- _____ 12,500 btu, Compliance
- _____ 12,000 btu, Compliance barge
- _____ 13,000 btu, 3.8# Sulfur barge
- _____ 13,000 btu, 3.0# Sulfur rail
- _____ 12,200 btu, 6.0# Sulfur barge

4) Term: _____

5). Quantity/Tons: _____

6). Scheduling (Check One): _____ Per Master Agreement
_____ Other: _____

7). Nomination Period (Check One): ___ Monthly ___ Quarterly ___ Other: _____

8). Source(s): _____

9). Delivery Point (Check One): _____ F.O.B. railcar at the Source
_____ F.O.B. barge at the Source
_____ Other: _____

10). Contract Price: _____

11). Specifications (Check One): _____ Per Attached Schedule 1 (Standard)
_____ Per Attached Schedule 2 (Periodic Performance)

12). Sampling Person (Check One): _____ Per Master Agreement
_____ Other: _____

13) Analysis Person (Check One): Per Master Agreement
 Other: _____

14) Payment (Check One): Per Master Agreement
 Other _____

Formulas for Quality Adjustments:

Btu: _____
SO₂: _____

Government Imposition (check one): Per Master Agreement
 Other _____

Other: _____

This letter constitutes a "Confirmation" as referred to in the Master Agreement specified below. This Confirmation supplements, forms part of, and is subject to the Master Coal Purchase and Sale Agreement dated _____, as it has or may be amended, and supplemented from time to time (the "Master Agreement") between the Coal Seller and Coal Buyer. All provisions contained in the Master Agreement govern this Confirmation to the extent not in conflict with the terms hereof. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

Please confirm that the foregoing correctly sets forth the terms of the agreement between you and us as to this Transaction by timely returning an executed copy of this letter by facsimile to (513) 419-5790. If you do not return this Confirmation or object to any of the terms stated herein within three (3) Business Days of your receipt of it, then in accordance with the Master Agreement this Confirmation shall be deemed correct, and binding and conclusive evidence of this Transaction. This Confirmation supercedes any broker confirmation concerning this Transaction.

Tyrone Synfuels, LP.

Counterparty

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Schedule 1
Specifications

The Coal delivered hereunder shall conform to the following specifications on an "as received" basis, in accordance with ASTM standards for each shipment in a month:

<u>Specification</u>	<u>Monthly Weighted Average Guarantee</u>	<u>Shipment Reject Limits (per Barge)</u>
HEATING VALUE	___,___ btu/lb	< ___ btu/lb
MOISTURE	___%	> ___%
ASH	___%	> ___%
SULFUR	___%	> ___%
SULFUR DIOXIDE (SO ₂)	___ lb./mmbtu	> ___ lb./mmbtu
VOLATILES	___%	< ___%
CHLORINE	___%	> ___%
SIZE:		
-- Top size (inches)*	< ___"	> ___"
-- Fines (% by wgt) passing 1/4" screen	< ___%	> ___%
GRINDABILITY (HGI)	___	< ___
<u>ASH FUSION TEMPERATURE (°F) (ASTM D1857)</u>		
<u>REDUCING ATMOSPHERE</u>		
Softening (H=W)	> ___ °F	< ___ °F

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

Schedule 2

(PERIODIC PERFORMANCE) TO CONFIRMATION: SPECIFICATIONS

_____ **PRODUCT**

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

<u>Specification</u>	<u>Periodic Performance Quality</u>		<u>Shipment Rejection Limits</u>
	<u>Limit</u>	<u>Period**</u>	<u>(Barge / Unit Train)</u>
BTU/LB.	_____	_____	< _____
MOISTURE	_____ %	_____	> _____ %
ASH	_____ %	_____	> _____ %
SULFUR	_____ %	_____	> _____ %
SULFUR DIOXIDE (SO ₂)	_____	_____	> _____ lb/MMBTU
VOLATILE	_____ %	_____	< _____ %
Size (2" x 0"):			
-- Top size (inches)*	< _____ "	<u>N/A</u>	> _____ "
-- Fines (% by wgt)	< _____ %	<u>N/A</u>	> _____ %
Passing 1/4" screen			
GRINDABILITY (HGI)	_____	<u>N/A</u>	< _____

ASH FUSION TEMPERATURE (°F) (ASTM D1857)

REDUCING ATMOSPHERE

Initial Deformation	_____	<u>N/A</u>	min. _____
Softening (H=W)	_____	<u>N/A</u>	min. _____
Softening (H=1/2W)	_____	<u>N/A</u>	min. _____
Fluid	_____	<u>N/A</u>	min. _____

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

** A = Annual, Q = Quarterly, M = Month

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

Exhibit B – Master Coal Purchase and Sale Agreement

NOTICES AND PAYMENT

NOTICES & CORRESPONDENCE

Buyer's Consultant: The Cincinnati Gas & Electric Company

overnight mail: 221 E. Fourth Street, EA 503

regular mail: 139 E. Fourth Street, EA 503

Cincinnati, OH 45202

Attn: Contract Administration

Fax No.: (513) 419-5196

Phone No.: (513) 419-5466

INVOICES

Buyer's Consultant: The Cincinnati Gas & Electric Company

1000 E. Main Street

Plainfield, IN 46168

Attn.: Supervisor, Settlements and Reporting

Fax No.: (317) 838 1023

Phone No.:

PAYMENTS

Buyer's Consultant: The Cincinnati Gas & Electric Company

Attn:

ABA Routing No.:

Account No.:

or to such other address as TYRONE or _____ shall from time to time designate by notice properly addressed and given to the other Party.



Exhibit B – Master Coal Purchase and Sale Agreement

NOTICES AND PAYMENT

NOTICES & CORRESPONDENCE

**Buyer's Consultant: The Cincinnati Gas &
Electric Company**

overnight mail: 221 E. Fourth Street, EA 503

regular mail: 139 E. Fourth Street, EA 503

Cincinnati, OH 45202

Attn: Contract Administration

Fax No.: (513) 419-5196

Phone No.: (513) 419-5466

INVOICES

**Buyer's Consultant: The Cincinnati Gas &
Electric Company**

1000 E. Main Street

Plainfield, IN 46168

Attn.: Supervisor, Settlements and Reporting

Fax No.: (317) 838 1023

Phone No.:

PAYMENTS

**Buyer's Consultant: The Cincinnati Gas &
Electric Company**

Attn:

ABA Routing No.:

Account No.:

or to such other address as TYRONE or _____ shall from time to time designate by
notice properly addressed and given to the other Party.





Exhibit A
Amended and Restated Confirmation Executed 3-30-05

Coal Seller: ___ Coal Buyer: X

Coal Seller: X Coal Buyer: _____

The Cincinnati Gas & Electric Company

P.O. Box 960, EA 502

Cincinnati, OH 45201

Attn: David Bosse

Attn: _____

Tel. 513-419-6928 _____

Tel. _____

Fax. 513-419-5516 _____

Fax. _____

Ref #: _____

Ref #: _____

This Amended and Restated Confirmation, superseding and replacing in its entirety the Confirmation between the parties executed March 30, 2005, sets forth the binding agreement entered into between The Cincinnati Gas & Electric Company ("CG&E") and _____ on the Trade Date set out below as to a Transaction (this "Transaction") regarding the sale/purchase of Coal under the following terms:

1). Commodity: Coal, as defined in the Master Agreement

2). Trade Date:

3). Product: High sulfur Ohio Coal

4). Term: January 1, 2006 – December 31, 2011

5). Quantity/Tons:

2006 –	_____	tons
2007 –	_____	tons
2008 –	_____	tons
2009 –	_____	tons
2010 –	_____	tons
2011 –	_____	tons

6). Scheduling (Check One): X Per Master Agreement
Other: _____

7). Nomination Period (Check One): X Monthly _____ Quarterly _____ Other: _____

8). Source(s): Belmont and Harrison Counties _____

9). Delivery Point (Check One): _____ F.O.B. railcar at the Source
X F.O.B. barge Ohio River Mile Post 92.8
Other: _____

10). **Contract Price:**

2006:

2007:

2008: However, either party may re-open the price for 2008 with written notice to the other party by June 1, 2007. If the parties, after good faith efforts, fail to reach agreement on a new price to be effective January 1, 2008 by July 31, 2007, the contract shall terminate at midnight on December 31, 2007. Notwithstanding the above, the Seller has the right, but not the obligation, to set the new price for Calendar year 2008 at _____ per ton, such price being deemed to be the agreed upon new price, and Buyer has the right, but not the obligation, to set the new price for Calendar year 2008 at _____ per ton, such price being deemed to be the agreed upon new price.

2009:

2010: 2009 price (Either party may re-open the price for 2010 with written notice to the other party by June 1, 2009. If the parties, after good faith efforts, fail to reach agreement on a new price to be effective January 1, 2010 by July 31, 2009, either party may terminate the agreement with written notice to the other party by August 15, 2009 to be effective at midnight on December 31, 2009. If neither party terminates the agreement by August 15, 2009, the contract price for 2010 will be the 2009 price plus _____ per ton)

2011:

In addition to the Contract Price set forth in this section there shall be a quarterly price adjustment for Coal Seller's cost of diesel fuel. This price component is computed as follows:

Diesel Fuel Cost Adjustment

Diesel Fuel Cost, based on the NYMEX No.2 Fuel Oil contract (also known as heating Oil #2, published by the WSJ) will be calculated quarterly, (i.e., January – March, April – June, July – September, and October – December), and adjustments to the Contract Price will be made on April 1, July 1, October 1 and January 1 of each year commencing April 1, 2006.

The adjustment will determined as follows. The base period will be October through December, 2004 Futures Contracts (Base Period) and the corresponding average will be the average NYMEX No. 2 Fuel Oil futures settlement price at contract expiration for the Base Period of 141.02¢ per gallon (Base Period Average). On a quarterly basis starting 4/1/06, the current quarterly average price will be determined using the average settlement price at contract expiration for each month during the quarter prior to the adjustment date (Current Period Average). As an example, for the first adjustment effective 4/1/06 the months used would be January through March, 2006. The Base Period Average is the denominator value and Current Period Average less the Base Period Average is the numerator value to determine the percentage

change (Percentage Change). The price component for diesel fuel will be adjusted upward (downward) from a base component price per ton of coal by taking 18 percent of the then current Contract Price times 85 percent of the Percentage Change for the current quarter to determine the quarterly adjustment (Quarterly Adjustment). The Quarterly Adjustment increase or decrease so obtained shall be "added to" or "subtracted from", as the case may be, the current Contract Price as defined in this section.

On a quarterly basis, for the term of the agreement, the three month average will be calculated to determine a new numerator value. The denominator will be held constant for the term of the agreement. All calculations will be to three decimal places.

(Example)

Contract Price	\$.							
Base Period Average	/gallon							
Current Period Average 4/1/06		<u>Jan. 06</u>	<u>Feb. 06</u>	<u>Mar. 06</u>	<u>AVG</u>			
Adjustment:								
Contract Price:	\$							
Quarterly Adjustment:	\$							
Adjusted Contract Price 4/1/06:	\$							

- 11). Specifications (Check One): Per Attached Schedule 1 (Standard)
 Per Attached Schedule 2 (Periodic Performance)
- 12). Sampling Person (Check One): Per Master Agreement
 Other: _____
- 13). Analysis Person (Check One): Per Master Agreement
 Other: _____
- 14). Weight (Check One): Per Master Agreement
 Other: _____
- 15). Payment (Check One): Per Master Agreement
 Buyer will self-invoice bi-monthly. Shipments unloaded during the first through the fifteenth of each month are payable 10 days after the end of the month at the Contract Price. Shipments unloaded during the sixteenth through the end of each month are payable, with quality adjustments for all Shipments unloaded during the month, 25 days after the end of each month. Shipments shall be

unloaded in the normal course of business, without unreasonable delay by Buyer. Buyer shall pay, by electronic transfer in immediately available United States funds, the amount set forth on each invoice along with the necessary information enabling reconciliation to the relevant Shipment to the applicable payment address below:

CG&E Billing Contact:

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

Counterparty Billing Contact:

Attn:
Fax:

Counterparty Payment Address:

Bank Name:
Account Number:
ABA number:
Phone Number:

Quality Adjustments:

Btu (Check One):

 N/A

 X Btu price adjustment (\$/ton):

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

SO₂ (Check One):

 N/A

 X SO₂ penalty adjustment (\$/ton):

If the Monthly Weighted Average Actual lbs SO₂/mmbtu exceeds the Monthly Weighted Average Guaranteed lbs SO₂/mmbtu for Coal loaded by Seller in any calendar month, the SO₂ Adjustment for all Coal loaded during the month is equal to:

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

Where: Spot price of SO₂ Emission Allowances for any given delivery month means the 3 day average SO₂ Price of allowances expressed in dollars per ton of SO₂ in the table entitled "AIR Daily Emission Allowance Indices" published in Energy Argus Air Daily, or its successor publication, for such calendar month of delivery as published on the 3rd, 4th and 5th business days of the subsequent month (e.g., spot SO₂ price for allowances for January 2005 coal shipments would be calculated by using an average of the indices published in Energy Argus Air Daily on February 3, 4, and 7.)

Ash (Check One):

 N/A

 X Ash Penalty Adjustment (\$/ton):

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

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

Example: $(13.5 - 12.5) \times \$0.50 = \0.50

Government Imposition (check one): X Per Master Agreement
 Other

Other: _____

This letter constitutes a "Confirmation" as referred to in the Master Agreement specified below. This Confirmation supplements, forms part of, and is subject to the Master Coal Purchase and Sale Agreement dated October 11, 2004, as it has or may be amended, and supplemented from time to time (the "Master Agreement") between the Coal Seller and Coal Buyer. All provisions contained in the Master Agreement govern this Confirmation to the extent not in conflict with the terms hereof. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement. This confirmation is subject to completion of the Skelly and Loy due diligence investigation being performed for CG&E related to this fuel (coal) supply agreement along with subsequent review by CG&E and final approval of CG&E management.

Please confirm that the foregoing correctly sets forth the terms of the agreement between you and us as to this Transaction by timely returning an executed copy of this letter by facsimile to 513-419-5516. This Confirmation supersedes any broker confirmation concerning this Transaction.

The Cincinnati Gas & Electric Company

Oxford Mining Company, Inc.

By: *Douglas F Esamann*

By: _____

Name: Douglas F Esamann

Name: _____

Title: Senior Vice President

Title: _____

Date: 7/22/05

Date: 7-22-05

Schedule 1
Standard to Confirmation: Specifications

_____ **Product**

<u>Specification</u>	Monthly Weighted Average Guaranteed Quality	Shipment Rejection Limits (Barge / Unit Train)
BTU/LB.	11,800	< 11,500
MOISTURE	8.00%	> 8.00%
ASH	12.5%	> 13.5%
SULFUR	_____ %	> _____ %
SULFUR DIOXIDE (SO ₂)	6.5 lb./MMBTU	> 6.9 lb./MMBTU
VOLATILE	38.4%	< 34%
Size (2" x 0"):		
- Top size (inches)*	< 2 x 0"	> _____ "
- Fines (% by wgt)		
Passing 1/4" screen	< 35%	> 45%
GRINDABILITY (HGI)	51.4	< 48
<u>ASH FUSION TEMPERATURE (°F) (ASTM D1857)</u>		
<u>REDUCING ATMOSPHERE</u>		
Initial Deformation	_____	min. _____
Softening (H=W)	2,100	min. 2,050
Softening (H=1/2W)	_____	min. _____
Fluid	_____	min. _____
Chlorine	.07%	>.07%

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

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

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

Amended and Restated Confirmation

This Confirmation sets forth the binding agreement entered into between **The Cincinnati Gas & Electric Company ("CG&E")** and _____,

Coal Seller:

Coal Buyer:

The Cincinnati Gas and Electric Co.

P.O. Box 960, EA606

Cincinnati, OH 45201-0960

Attn: _____

Attn: John R. Kreinest

Tel. _____

Tel. (513) 419 5725

Fax. (_____

Fax. (513) 419 5875

Ref #: _____

Ref #: _____

as amended and restated hereby as of 11/8, 2004 (this "Transaction") regarding the purchase of Coal under the following terms:

- 1). Commodity: Coal, as defined in the Master Agreement
- 2). Trade Date: March 1, 2004
- 3). Product: coal as specified in Schedule 1
- 4). Term: January 2005 – December 2006.
- 5). Quantity: 2005: _____ tons;
2006: _____ tons;
for a total Quantity of _____ tons.

Notwithstanding the foregoing, CG&E shall not have the right to purchase any portion of the Contract Quantity that Tyrone Synfuels, LP. ("Tyrone") has purchased, or has agreed to purchase, pursuant to the Corresponding Tyrone Confirmation (described below). Counterparty agrees that CG&E shall have no obligations or liability to Counterparty with respect to any coal that Tyrone purchases or agrees to purchase pursuant to the Corresponding Tyrone Confirmation.

All coal that Tyrone purchases or agrees to purchase pursuant to the Corresponding Tyrone Confirmation shall be credited against CG&E's purchase obligation under this Confirmation.

- 6). Scheduling: Quantity shall be scheduled for delivery in the following amounts per month ("Monthly Tonnage Obligations") unless otherwise mutually agreed to by the parties:

January 2005 through December 2006 – _____ tons per month
(approximately _____ barges per month)

Buyer will advise Seller on or before the 15th day of each calendar month preceding scheduled shipments of the number of barges it desires to load during the succeeding calendar month to fulfill the transaction Quantity and Buyer's desired loading dates and delivery schedule ("Delivery Schedule"). The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule within the Nomination Period and within each month during the Nomination Period. All deliveries will occur in approximate ratable amounts over the term of a transaction. The delivery period shall begin no earlier than the first day of the delivery month and at least seven (7) days before the end of the month. Delivery must be completed by the last day of the delivery month.

- 7) Nomination Period (Check One): N/A
- 8) Source(s): Seller's mines located in _____
- 9) Delivery Point (Check One): _____ F.O.B. railcar at the Source
_____ F.O.B. barge at the Source
 X Other: FOB barge at Seller's dock at Ohio River milepost 66

Seller may specify alternate delivery points, subject to Buyer's approval, which shall not be unreasonably withheld, and title and risk of loss shall transfer to Buyer F.O.B. barge at such alternate delivery points, provided that the delivered cost per million BTU of the Fuel loaded at alternate delivery points shall be no greater than Fuel shipped F.O.B. the Delivery Point. In the event that Fuel is delivered at any other delivery points acceptable to Buyer and such shipment results in a lower delivered cost per million BTU of the Fuel, including Seller's other transportation costs, any net savings shall accrue to the Buyer and Seller equally.

10) Contract Price: \$ _____ per ton at Delivery Point for the Quantity deliverable in 2005, and \$ _____ per ton at Delivery Point for the Quantity deliverable in 2006. The price shall include all taxes, fees, and any proper charges payable by Seller.

11) Specifications (Check One): X Per Attached Schedule 1 (Standard)
_____ Per Attached Schedule 2 (Periodic Performance)

Buyer may reject any Shipment falling outside of the aforementioned Specifications within 24 hours of receipt of analysis, Shipments that may cause handling problems, or Shipments that are materially contaminated with foreign materials with written notification to Seller. Buyer shall return Coal to Seller at Seller's cost. Seller shall make best efforts to replace the rejected Coal no later than the last calendar day of the delivery month.

12) Sampling and Analysis: Coal sampled via mechanical sampler using ASTM standards for each Shipment shall be performed at the Delivery Point. Analysis is to be performed in accordance with ASTM standards by a mutually acceptable independent commercial laboratory with the cost for such sampling and analysis to be from the

Seller's account. Such analysis shall be final and binding and shall govern for payment. Analysis shall be provided to Buyer within 48 hours of loading of the barge.

- 13) Payment (Check One): Per Master Agreement
 Other (below)

Buyer will self-invoice bi-monthly. Shipments unloaded during the first through the fifteenth of each month are payable 10 days after the end of the month at the Contract Price. Shipments unloaded during the sixteenth through the end of each month are payable, with quality adjustments for all Shipments unloaded during the month, 25 days after the end of each month. Shipments shall be unloaded in the normal course of business, without unreasonable delay by Buyer. Buyer shall pay, by electronic transfer in immediately available United States funds, the amount set forth on each invoice along with the necessary information enabling reconciliation to the relevant Shipment to the applicable payment address below.

- 14) Corresponding Tyrone Confirmation: The coal transaction confirmation dated _____

Formulas for Quality Adjustments:

BTU Price Adjustment:

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

Ash Penalty Adjustment ($\$/\text{ton}$): If the Monthly Weighted Average Actual Ash % exceeds the Monthly Guaranteed Ash %, the Ash Penalty Adjustment is equal to:

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

Sulfur Adjustment ($\$/\text{ton}$): If the Monthly Weighted Average Actual lbs SO_2/mmbtu deviates from the Monthly Weighted Average Guaranteed lbs SO_2/mmbtu for Coal shipped and unloaded by Buyer in any calendar month, the Sulfur Adjustment for all Coal unloaded during the month is equal to:

$\$/\text{ton} = (0.054 - (\text{MWAS} * \text{MWABtu} / 1,000,000)) \times \text{CFI}$

where:

MWAS = Monthly Weighted Average Actual lbs SO_2/mmbtu expressed to three decimal points

MWABtu = Monthly Weighted Average Actual Btu/lb expressed to three decimal points

CFI = Evolution Market's SO_2 Price. Mid-way between the bid and offer price for the most current month published.

If the SO2 price becomes unavailable from Evolution Markets Brokerage or any successor organization, Buyer and Seller shall mutually agree upon a substitute price or index.

Price adjustments shall be made to the nearest \$0.001.

Governmental Imposition (check one): _____ Per Master Agreement
 Other (below)

If any Governmental Imposition is adopted or becomes effective on or after the Trade Date, Seller shall notify Buyer and shall submit to Buyer in writing, an analysis identifying the Government Imposition causing the cost impact and the extent of such cost impact on the ownership or operation of the coal mines designated as Sources hereunder or on the production, mining preparation or sale of coal purchased hereunder and showing the calculation of the amount of change in the Contract Price. The Contract Price for coal to be paid by Buyer hereunder shall then be adjusted by adding or subtracting the per ton cost of the Governmental Imposition to determine an adjusted Contract Price. The effective date of any Contract Price increase or decrease pursuant to this section shall be the effective date of the Governmental Imposition causing the cost increase or decrease, as the case may be. If the Governmental Imposition will continue for the life of this Transaction, then the Contract Price for subsequent contract years, if any, shall also be adjusted by the per ton amount of the Governmental Imposition.

Other: _____

This letter constitutes a "Confirmation" as referred to in the Master Agreement specified below. This Confirmation supplements, forms part of, and is subject to the Master Coal Purchase and Sale Agreement dated May 3, 2004, as it has or may be amended, and supplemented from time to time (the "Master Agreement") between CG&E and _____ All provisions contained in the Master Agreement govern this Confirmation to the extent not in conflict with the terms hereof. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

Please confirm that the foregoing correctly sets forth the terms of the agreement between you and us as to this Transaction by timely returning an executed copy of this letter by facsimile to (513) 419-5875. If you do not return this Confirmation or object to any of the terms stated herein within three (3) Business Days of your receipt of it, then in accordance with the Master Agreement this Confirmation shall be deemed correct, and binding and conclusive evidence of this Transaction. This Confirmation supercedes any broker confirmation concerning this Transaction.

The Cincinnati Gas & Electric Company

By: _____

By: _____

Name: BK Hall

Title: VP Commercial Foods

Date: 11/8/04

Name: _____

Title: _____

Date: _____

**Schedule 1
Specifications**

The Coal delivered hereunder shall conform to the following specifications on an "as received" basis, in accordance with ASTM standards for each shipment in a month:

<u>Specification</u>	<u>Monthly Weighted Average Guarantee</u>	<u>Shipment Reject Limits (per Barge)</u>
HEATING VALUE	12,000 btu/lb	< 11,750 btu/lb
MOISTURE	8%	>10%
ASH	12.5%	>13.5%
SULFUR	2.7%	>3.00%
SULFUR DIOXIDE (SO ₂)	4.5 lb./mmbtu	>5.0 lb./mmbtu
VOLATILES	38.4%	<34%
CHLORINE	0.07%	>0.07%
SIZE:		
-- Top size (inches)*	<2"	> 2"
-- Fines (% by wgt) passing ¼" screen	<35%	>45%
GRINDABILITY (HGI)	51.4	<48
<u>ASH FUSION TEMPERATURE (°F) (ASTM D1857)</u>		
<u>REDUCING ATMOSPHERE</u>		
Softening (H=W)	>2,100 °F	<2,050 °F

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

Confirmation

This Confirmation sets forth the binding agreement entered into between **Tyrone Synfuels, LP. ("TYRONE")** and _____, as

Coal Seller:

Coal Buyer:

Tyrone Synfuels, LP.

P.O. Box 960, EA606

Cincinnati, OH 45201-0960

Attn: _____

Attn: John R. Kreinest

Tel. _____

Tel. (513) 419 5725

Fax. _____

Fax. (513) 419 5875

Ref #: _____

Ref #: _____

amended and restated hereby as of 1/1/04, 2004 (this "Transaction") regarding the purchase of Coal under the following terms:

- 1). Commodity: Coal, as defined in the Master Agreement
- 2). Trade Date: March 1, 2004
- 3). Product: coal as specified in Schedule 1
- 4). Term: January 2005 – December 2006.
- 5). Quantity: 2005: tons;
 2006: tons;
 for a total Quantity of tons.

Notwithstanding the foregoing, TYRONE shall not have the right to purchase any portion of the Contract Quantity that Tyrone Synfuels, LP. ("Tyrone") has purchased, or has agreed to purchase, pursuant to the Corresponding Tyrone Confirmation (described below). Counterparty agrees that TYRONE shall have no obligations or liability to Counterparty with respect to any coal that Tyrone purchases or agrees to purchase pursuant to the Corresponding Tyrone Confirmation.

All coal that Tyrone purchases or agrees to purchase pursuant to the Corresponding Tyrone Confirmation shall be credited against TYRONE's purchase obligation under this Confirmation.

- 6). Scheduling: Quantity shall be scheduled for delivery in the following amounts per month ("Monthly Tonnage Obligations") unless otherwise mutually agreed to by the parties:

January 2005 through December 2006 – _____, tons per month
(approximately _____ barges per month)

Buyer will advise Seller on or before the 15th day of each calendar month preceding scheduled shipments of the number of barges it desires to load during the succeeding calendar month to fulfill the transaction Quantity and Buyer's desired loading dates and delivery schedule ("Delivery Schedule"). The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule within the Nomination Period and within each month during the Nomination Period. All deliveries will occur in approximate ratable amounts over the term of a transaction. The delivery period shall begin no earlier than the first day of the delivery month and at least seven (7) days before the end of the month. Delivery must be completed by the last day of the delivery month.

- 7) Nomination Period (Check One): N/A
- 8) Source(s): Seller's mines located in
- 9) Delivery Point (Check One): _____ F.O.B. railcar at the Source
_____ F.O.B. barge at the Source
 X Other: FOB barge at Seller's dock at Ohio River milepost 66

Seller may specify alternate delivery points, subject to Buyer's approval, which shall not be unreasonably withheld, and title and risk of loss shall transfer to Buyer F.O.B. barge at such alternate delivery points, provided that the delivered cost per million BTU of the Fuel loaded at alternate delivery points shall be no greater than Fuel shipped F.O.B. the Delivery Point. In the event that Fuel is delivered at any other delivery points acceptable to Buyer and such shipment results in a lower delivered cost per million BTU of the Fuel, including Seller's other transportation costs, any net savings shall accrue to the Buyer and Seller equally.

- 10) Contract Price: \$ _____ per ton at Delivery Point for the Quantity deliverable in 2005, and \$ _____ per ton at Delivery Point for the Quantity deliverable in 2006. The price shall include all taxes, fees, and any proper charges payable by Seller.

- 11) Specifications (Check One): X Per Attached Schedule 1 (Standard)
_____ Per Attached Schedule 2 (Periodic Performance)

Buyer may reject any Shipment falling outside of the aforementioned Specifications within 24 hours of receipt of analysis, Shipments that may cause handling problems, or Shipments that are materially contaminated with foreign materials with written notification to Seller. Buyer shall return Coal to Seller at Seller's cost. Seller shall make best efforts to replace the rejected Coal no later than the last calendar day of the delivery month.

- 12) Sampling and Analysis: Coal sampled via mechanical sampler using ASTM standards for each Shipment shall be performed at the Delivery Point. Analysis is to be performed in accordance with ASTM standards by a mutually acceptable independent commercial laboratory with the cost for such sampling and analysis to be from the

Seller's account. Such analysis shall be final and binding and shall govern for payment. Analysis shall be provided to Buyer within 48 hours of loading of the barge.

13) Payment (Check One): Per Master Agreement
 X Other (below)

Buyer will self-invoice bi-monthly. Shipments unloaded during the first through the fifteenth of each month are payable 10 days after the end of the month at the Contract Price. Shipments unloaded during the sixteenth through the end of each month are payable, with quality adjustments for all Shipments unloaded during the month, 25 days after the end of each month. Shipments shall be unloaded in the normal course of business, without unreasonable delay by Buyer. Buyer shall pay, by electronic transfer in immediately available United States funds, the amount set forth on each invoice along with the necessary information enabling reconciliation to the relevant Shipment to the applicable payment address below.

Formulas for Quality Adjustments:

BTU Price Adjustment:

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

Ash Penalty Adjustment (\$/ton): If the Monthly Weighted Average Actual Ash % exceeds the Monthly Guaranteed Ash %, the Ash Penalty Adjustment is equal to:

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

Sulfur Adjustment (\$/ton): If the Monthly Weighted Average Actual lbs SO₂/mmbtu deviates from the Monthly Weighted Average Guaranteed lbs SO₂/mmbtu for Coal shipped and unloaded by Buyer in any calendar month, the Sulfur Adjustment for all Coal unloaded during the month is equal to:

$\$/\text{ton} = (0.054 - (\text{MWAS} * \text{MWABtu} / 1,000,000)) \times \text{CFI}$

where:

MWAS = Monthly Weighted Average Actual lbs SO₂/mmbtu expressed to three decimal points

MWABtu = Monthly Weighted Average Actual Btu/lb expressed to three decimal points

CFI = Evolution Market's SO₂ Price. Mid-way between the bid and offer price for the most current month published.

If the SO2 price becomes unavailable from Evolution Markets Brokerage or any successor organization, Buyer and Seller shall mutually agree upon a substitute price or index.

Price adjustments shall be made to the nearest \$0.001.

Governmental Imposition (check one): Per Master Agreement
 Other (below)

If any Governmental Imposition is adopted or becomes effective on or after the Trade Date, Seller shall notify Buyer and shall submit to Buyer in writing, an analysis identifying the Government Imposition causing the cost impact and the extent of such cost impact on the ownership or operation of the coal mines designated as Sources hereunder or on the production, mining preparation or sale of coal purchased hereunder and showing the calculation of the amount of change in the Contract Price. The Contract Price for coal to be paid by Buyer hereunder shall then be adjusted by adding or subtracting the per ton cost of the Governmental Imposition to determine an adjusted Contract Price. The effective date of any Contract Price increase or decrease pursuant to this section shall be the effective date of the Governmental Imposition causing the cost increase or decrease, as the case may be. If the Governmental Imposition will continue for the life of this Transaction, then the Contract Price for subsequent contract years, if any, shall also be adjusted by the per ton amount of the Governmental Imposition.

Other:

This letter constitutes a "Confirmation" as referred to in the Master Agreement specified below. This Confirmation supplements, forms part of, and is subject to the Master Coal Purchase and Sale Agreement dated May 3, 2004, as it has or may be amended, and supplemented from time to time (the "Master Agreement") between TYRONE and

All provisions contained in the Master Agreement govern this Confirmation to the extent not in conflict with the terms hereof. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

Please confirm that the foregoing correctly sets forth the terms of the agreement between you and us as to this Transaction by timely returning an executed copy of this letter by facsimile to (513) 419-5875. If you do not return this Confirmation or object to any of the terms stated herein within three (3) Business Days of your receipt of it, then in accordance with the Master Agreement this Confirmation shall be deemed correct, and binding and conclusive evidence of this Transaction. This Confirmation supercedes any broker confirmation concerning this Transaction.

Tyrone Synfuels, LP.

By: Clark Harrison

By: _____

Name: Clark D. Hansen
Title: President CQ Inc.
Date: _____
Title: General Partner

Name: _____
Title: _____
Date: _____

**Schedule 1
Specifications**

The Coal delivered hereunder shall conform to the following specifications on an "as received" basis, in accordance with ASTM standards for each shipment in a month:

<u>Specification</u>	<u>Monthly Weighted Average Guarantee</u>	<u>Shipment Reject Limits (per Barge)</u>
HEATING VALUE	12,000 btu/lb	< 11,750 btu/lb
MOISTURE	8%	>10%
ASH	12.5%	>13.5%
SULFUR	2.7%	>3.00%
SULFUR DIOXIDE (SO ₂)	4.5 lb./mmbtu	>5.0 lb./mmbtu
VOLATILES	38.4%	<34%
CHLORINE	0.07%	>0.07%
SIZE:		
-- Top size (inches)*	<2"	> 2"
-- Fines (% by wgt) passing 1/4" screen	<35%	>45%
GRINDABILITY (HGI)	51.4	<48
<u>ASH FUSION TEMPERATURE (°F) (ASTM D1857)</u>		
<u>REDUCING ATMOSPHERE</u>		
Softening (H=W)	>2,100 °F	<2,050 °F

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

Coal Buyer:

Counterparty Name

**The Union Light, Heat and Power
Company**

139 E. Fourth Street EA606

Cincinnati, Ohio 45202

Attn: Kim Lubrecht

Tel. 513-419-5302

Fax. 513-419-5840

Ref #: HC 10451

Coal Seller:

Counterparty Name

Attn:

Tel.:

Fax:

Ref #: _____

Coal Supply Agreement

This Coal Supply Agreement ("Agreement"), by and between _____, a Delaware limited liability company (hereinafter "Seller"), and The Union Light Heat and Power Company, a Kentucky Corporation (hereinafter "Buyer"), effective December 20, 2005 ("Effective Date") establishes the terms and conditions for the sale and purchase of Coal (The "Agreement"). Seller and Buyer can be individually referred to as a "Party" or collectively as "Parties."

- 1). Commodity: Crushed, bituminous Coal containing no synthetic fuels, substantially free from any extraneous material and debris, with no intermediate sizes to be added or removed and otherwise meeting the Specifications of this Agreement (hereinafter "Coal" or "Commodity").
- 2). 2" X 0" ILB 12,100 Btu, 5.0 #SO2
- 3). Term: January 1, 2006 through and including December 31, 2008, unless terminated as provided for herein
- 4). Quantity (in tons):
2006
2007
2008

Seller and Tyrone Synfuel LP ("Tyrone") will enter into a Coal Supply Agreement ("Tyrone Agreement"). Quantity shall be ratable throughout each calendar year of the term of this Agreement. Tyrone and Seller may enter into purchase order(s) pursuant to which Tyrone will purchase coal from Seller that would otherwise be purchased by Buyer pursuant to this Agreement

that corresponds to a particular Tyrone purchase order ("Corresponding Tyrone Purchase Order"). Seller acknowledges and agrees that any coal that Tyrone purchases pursuant to a Corresponding Tyrone Purchase Order shall be credited towards the satisfaction of Buyer's obligation to purchase coal and Seller's obligation to deliver coal under this Agreement, to the same extent as if Buyer had purchased such coal from Seller and Seller had delivered coal to Buyer under this Agreement. In no event shall Seller's obligation to deliver the quantity of coal under the Tyrone Agreement and this Agreement exceed the annual Quantity set forth in paragraph 4 above. The Corresponding Tyrone Purchase Order and Tyrone Agreement shall govern such transaction between Seller and Tyrone. Seller further acknowledges that Buyer shall have no obligations under this Agreement or any purchase order with respect to any coal that Tyrone purchases or agrees to purchase, and agrees that Seller shall look solely to Tyrone for the payment for, and for the performance of any obligations with respect to, any coal that Tyrone purchases or agrees to purchase from Seller pursuant to the Tyrone Agreement or any Tyrone Purchase Order.

Buyer agrees that any coal that Tyrone agrees to purchase pursuant to a Tyrone Purchase Order that corresponds to this Agreement that is shipped for delivery to Buyer's East Bend facility after the date on which the Synfuel Sales Agreement dated March 11, 2004 between Tyrone and Buyer, shall be purchased by Buyer pursuant to this Agreement.

5). **Scheduling:** Buyer will advise Seller on or before the 15th day of each calendar month preceding scheduled shipments of the number of barges it desires to load during the succeeding calendar month to fulfill the transaction Quantity and Buyer's desired loading dates and delivery schedule ("Delivery Schedule"). Seller will advise Buyer on or before the 25th day of the month preceding shipment of its Source mine(s)/loadout(s) for the scheduled monthly shipment(s). The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule within the Nomination Period and within each month during the Nomination Period. All deliveries will occur in approximate monthly ratable amounts throughout each calendar year during the term of Agreement. The delivery period shall begin no earlier than the first day of the delivery month and at least seven (7) days before the end of the month. Delivery must be completed by the last day of the delivery month.

6). **Nomination Period** Monthly

7). **Source(s):**
2006 -2007 approved Sources:

Mine:
Mine Operating Co.:
Mine State:
Mine County:
Delivery Point:

Mine:
Mine Operating Co.:
Mine State:
Mine County:
Delivery Point:

Mine:
Mine Operating Co.:

Mine State:
Mine County:
Delivery Point:

Mine:
Mine Operating Co.:
Mine State:
Mine County:
Delivery Point:

Mine:
Mine Operating Co.:
Mine State:
Mine County:
Delivery Point:

2008 Approved Sources:

Mine:
Mine Operating Co.:
Mine State:
Mine County:
Delivery Point:

Mine:
Mine Operating Co.:
Mine State:
Mine County:
Delivery Point:

This Agreement is subject to Buyer conducting a ten (10) barge test burn of each approved sources with the exception of . In the event that Buyer determines that a Source is unacceptable to Buyer using Buyer's reasonable discretion, such Source shall be removed from the Approved Source(s). Seller shall not supply coal to Buyer pursuant to this Agreement from any other source unless Buyer shall give its prior written consent, which shall not be unreasonably withheld.

8). **Delivery Points:** F.O.B. barge @ the mile post for the appropriate Source referenced in Section 7 above.

9). **Contract Price:** Prices below are dollars per ton f.o.b. barge at Delivery Point. Price shall include all taxes, fees and proper charges, and shall be subject to quality adjustments as provided for in Section 12 herein. Prices, however, are not inclusive of harbor switching and fleeting charges which shall be the responsibility of Buyer.

<u>CY</u>	<u>\$/ton</u>
2006	\$
2007	\$
2008	\$

(Buyer will be kept whole on the transportation differential based on the transportation rate out of Power Dock)

10). Specifications: Per Attached Schedule 1 (Standard)

Buyer may reject any Shipment falling outside of the aforementioned Rejection Specifications, shipments that may cause handling problems or shipments that are contaminated with foreign materials with written notification to Seller. Buyer shall return Coal to Seller at Seller's cost. Seller shall make reasonable efforts to replace the rejected Coal no later than the last calendar day of the delivery month.

11). Sampling and Analysis: Seller shall sample and analyze Commodity at Delivery Point at its expense. Sampling shall be carried out following the American Society of Testing and Materials (ASTM) standard, as set forth in ASTM standard D2234 (Type I, condition C, Part-Stream Cut). Analysis is to be done in accordance with applicable ASTM standards. Such analysis shall be final and binding and shall govern for payment. Seller shall provide analysis to Buyer within 48 hours of loading Commodity into the barge except for weekends or holidays in which analysis will be provided by the second business day thereafter.

Seller shall make available sample splits and a report of each sample's quality for Buyer upon request. Buyer, at its expense, may make arrangements to pick up samples. Seller shall retain, for a period of 60 days from the loading date, sample splits taken in accordance with the provisions of this Agreement for use by Buyer and the independent laboratory specified below.

In the event of a disagreement over Commodity analysis and upon Buyer and Seller selecting a mutually agreed upon independent laboratory, Seller shall provide sample splits to the independent laboratory for analysis. Such analysis shall be accepted as the quality of Commodity received. The cost of the independent analysis shall be equally shared between Buyer and Seller.

12). Adjustments:

(a) Quality Adjustments:

BTU Premium/Penalty Price Adjustment:

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

SO2 Premium/Penalty Price Adjustment:

The contracted SO2 content shall be 5.0 lbs. SO2 per million Btu on a monthly weighted average basis. SO2 Price adjustments shall not apply until the monthly weighted average SO2 falls outside the deadband of 4.80 lbs. SO2 and 5.20 lbs. SO2.

For purposes of this Agreement, a lb. of SO2 shall equal $\frac{\text{AR } S\% \times 20,000}{\text{AR Btu/lb}}.$

Should the monthly weighted average SO2 of the Commodity fall outside the deadband, the Contract Price will be adjusted, on a monthly basis, to reflect actual SO2 value received according to the following formula:

$\$/\text{ton} = ((5.0 \text{ lbs SO}_2/\text{mmbtu} - \text{Monthly Weighted Average Actual lbs. SO}_2/\text{mmbtu}) \times \text{Monthly Weighted Average Actual Btu/lb}) \times ((\text{Spot Price of SO}_2 \text{ Emission Allowances} \times .08) + \$85) / 1,000,000$

Where: Spot price of SO₂ Emission Allowances for any given delivery month means the 3 days average SO₂ Price of allowances expressed in dollars per ton of SO₂ in the table entitled "Daily Market Assessments, SO₂ Allowances, Price for current vintage year" published in Energy Argus Air Daily, or its successor publication, as published on the 3rd, 4th and 5th business days of the subsequent month (e.g., spot price for allowances for January 2006 would be calculated by using an average of the daily market assessment price for the 2006 vintage year published in Energy Argus Air Daily on February 3rd, 6th and 7th)

Ash Premium/Penalty Price Adjustment:

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

For illustrative purposes, should the Monthly Weighted Average Actual Ash % equal 9.0% in a given month, the ash premium for the month would be \$.50/ton calculated as follows: $[(10.0\% \text{ MWAG} - 9.0\% \text{ MWAA}) * \$0.50]$.

Price adjustments shall be made to the nearest \$0.001 and calculated on a monthly weighted average.

(b) **Price Adjustment for Changes in Law:** Buyer and Seller agree that if any federal, state, or local governmental authority, subsequent to January 14, 2005, (a) enacts, promulgates or otherwise makes effective any new statute ordinance, regulation or rule, including, but not limited to, any tax mandate, or (b) amends, modifies, or changes in any way the text, interpretation or application of any existing statute, ordinance, regulation or rule including, but not limited to, any tax mandate relative to Seller's performance of this Agreement (collectively referred to herein as "Change in Laws" (but in either case not including any statute, ordinance, regulation, rule, or other governmental mandate existing as of January 14, 2005 that has a scheduled modification or termination date), and if such Change in Laws directly or indirectly increase(s) or decreases Seller's cost of performance of this Agreement then the current selling price shall be adjusted upward or downward by the amount of such change on the effective date such change occurs. Buyer shall have the right to audit Seller's books and records to determine the amount of any upward or downward price adjustment under this section.

(c) **Price Adjustment for Escalation:** The Base Price shall be adjusted according to the price adjustment provisions in this Agreement (rounded to the nearest hundredth) and shall be referred to herein as the "Adjusted Base Price."

The Base Price per ton shall be increased or decreased for each percentage point of change, or proportionately for fractional parts of a percentage point of change, to reflect changes in the following indices. The Base Price will be allocated per the index weights detailed below. Changes shall become effective quarterly as of January 1, April 1, July 1, and October 1 of each year, beginning April 1, 2006, and shall be based upon the preliminary indices for November,

February, May and August, respectively. The index base and base amounts shall be the following:

	<u>Index Weight</u>	<u>Index Base</u>	
CPI(W) (BLS Series Id cuur0000sa0)	35%	190.7	Preliminary January 2005
PPI Industrial Commodities -Less Fuel & Pwr* (BLS Series Id wpu03t15m05)	20%	156.5	Preliminary January 2005
#2 Diesel Fuel* (BLS Series ID wpu057303)	3%	141.1	Preliminary January 2005
Steel (BLS Series Id WPU1026)	12%	160.0	Preliminary January 2005
Prime Rate***	15%	5.25	Actual December 31, 2004
GDP-IPD**	15%	109.100	Final Q4 2004

*U.S. Department of Labor, Bureau of Labor Statistics, Not Seasonally Adjusted

**U.S. Department of Commerce, Bureau of Economic Analysis, Price Indexes for Gross Domestic Product, / Table 6 / Seasonally Adjusted

***Prime rate of interest as reported in the money rates section of the Wall Street Journal on the fifteenth (15th) day of the last month in the quarter prior to the applicable price adjustment effective date or first business day thereafter - - as published on the subsequent business day.

Embedded Escalation Deadband

The impact of the quarterly escalations, on a net basis, shall not impact the Base Price until they exceed the Embedded Escalation Deadband designated in Table A on a quarterly basis. Any adjustment exceeding the 2% deadband shall be shared equally by Parties. Exhibit A illustrates a hypothetical example of an escalation calculation.

Minimum Adjustments

However, in no event shall the Adjusted Base price at any time be lower than the Base Price, by calendar year, as listed in paragraph 9 above.

Change or Discontinuance of Indices

If the basis for any of the index numbers is changed, said index shall be adjusted to take into account such changed basis. In the event any designated index is discontinued or altered, becomes unavailable, or is no longer applicable, the Parties shall undertake to agree on a substitute index

or a substitute method of cost adjustment which most closely matches the economic structure of the discontinued or altered index. If the Parties fail to reach agreement on the substitute index or method within 90 days, then the substitute index or substitute method of cost adjustment shall be submitted to arbitration and resolved.

Rounding

The values to perform the calculations shall be rounded to two decimal places.

13). **Weight Determination:** The weight of each barge Shipment shall be determined by a composite of all trucks that were dumped directly into that particular barge using Seller's certified truck scales, or if not available, by draft survey taken at the Source at Seller's expense, or if neither of these are available by Buyer's unloaded weights at its destination. Seller assures Buyer that all coal transferred from truck to the barge shall not at any time touch the ground once the truck has been weighed. Buyer, upon request, reserves the right to view any and all truck weight tickets. Seller represents that its truck scales shall be calibrated on at least a semiannual basis. Such weights shall be final and binding and shall govern for payment.

General Terms and Conditions

14). **Force Majeure:** If a Party is delayed in or prevented from performing, in whole or in part, any of its obligations due to acts of God, war, riots, civil insurrection, threats of violence, acts of the public enemy, terrorism, nuclear disasters, strikes, lockouts, labor shortages and disputes, disturbances or unrest, damage to mines or plants, inability to procure supplies or equipment, breakdown of equipment or facilities, fires, explosions, floods, river freeze-up, earthquakes, inability to obtain permits or authorizations from any governmental authority after prudent and timely submission and application for same, or unforeseen geologic conditions in coal seams not discernable by prudent engineering or other causes that are beyond the reasonable control and without the fault or negligence of the Party affected or Party's coal supplier or resale customer thereby (such events being referred to herein as "Force Majeure"), and such Party gives oral notice within 10 days and full details of the Force Majeure to the other Party within ninety (90) days after the occurrence of the event of Force Majeure (such notice to be confirmed in writing), then during the pendency of such Force Majeure but for no longer period, the obligations of the Parties (other than obligations to make payments then due) shall be suspended to the extent required by the event. The Party affected by the Force Majeure shall remedy the Force Majeure with all reasonable dispatch and will keep the other Party advised as to the continuance of the Force Majeure event; provided however, that this provision shall not require Seller to deliver, or Buyer to receive, the Commodity at points other than the Delivery Point for the authorized Source including allowable substitutions under the Transaction. A change in market conditions including the ability of Seller to sell Commodity at a higher price, or Buyer or Buyer's customer to buy Commodity at a lower price, whether or not foreseeable shall not be considered a Force Majeure event. If an event of complete or partial Force Majeure persists for a continuous period of sixty (60) days, then the Party not claiming Force Majeure shall have the option, upon three (3) days' prior written notice, to terminate this transaction to the extent affected and the associated obligations of the Parties (other than payment obligations for prior performance thereunder). In the event of a Force Majeure, delivery of the affected Quantity of Commodity shall not be made up except by mutual agreement of the Buyer and Seller. If Seller claims Force Majeure and is unable to meet all of its sales obligations under this Agreement and any other of its Commodity sales agreements involving Commodity of a similar type and quality as the Commodity from the affected Source, or if Buyer claims Force Majeure and is unable to meet all of its purchase obligations under this Agreement and any other of its Commodity purchase agreements involving Commodity of a similar type and quality as the Commodity, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated on a

pro rata basis among the affected transaction(s) and such other Commodity supply or purchase agreements involving Commodity of the same type and quality as the Commodity, to the extent contractually permitted by such transaction(s) and agreement(s). An event of Force Majeure affecting the _____ shall be deemed an event of Force Majeure affecting Seller. An event of Force Majeure affecting the East Bend Station shall be deemed an event of Force Majeure affecting Buyer.

15). Environmental Law Force Majeure: If any new environmental law is enacted or new regulation is promulgated which becomes effective during the term of this Agreement, that would not have been reasonably known as of the effective date of this agreement, Buyer and Seller shall first make all reasonable efforts to change its operations or equipment in order to continue utilizing the maximum amount of coal meeting the existing coal quality specifications under the Agreement. If after all such reasonable efforts have been made Buyer cannot continue to utilize all of the coal to be delivered hereunder, Buyer may reduce coal shipments hereunder on a pro-rata basis with any/all of Buyer's contracts utilizing similar coal, notwithstanding Section 12(b).

If as a result, Seller's contract tonnage is reduced hereunder, then Buyer shall promptly notify Seller, in writing, of the new required coal quality specifications for any replacement tonnage. Seller shall consider and evaluate what steps can be reasonably taken to meet the new coal quality specifications. Buyer and Seller agree to negotiate in good faith towards a new agreement or an amendment of this Agreement based on such environmental changes in law.

Changes in market conditions, commercial frustration, commercial impracticability or the occurrence of unforeseen events rendering performance of this Agreement uneconomical for Buyer, shall not constitute a new environmental law or regulation

16). Damages: (a) Unless excused by Force Majeure, or Buyer's failure to perform, and in the event that Seller delivers 80% or more of the Quantity of Commodity to be delivered in any calendar month during the Term of this Agreement pursuant to the Delivery Schedule, for barge deliveries, or two (2) days of shipments for truck deliveries, or one (1) train shipment, whichever is applicable, then Seller shall have thirty (30) days to make-up the shortfall of tons of Coal Seller failed to deliver in given month ("Make-Up Tons") without penalty to Seller. Any shipments in any month shall be deemed to be Make-Up Tons until all deficiencies from any previous months, if applicable, are satisfied. Unless excused by Force Majeure, or Buyer's failure to perform, if Seller delivers less than (i) 80% of the Quantity of Commodity to be delivered hereunder pursuant to the Delivery Schedule plus (ii) the cumulative Make-Up Tons then, Buyer and Seller shall enter into "good faith" negotiations to determine a mutually agreeable make-up schedule. If after 15 days, a mutually agreeable make-up schedule has failed to be agreed upon, then Seller shall pay to the Buyer for each ton of the deficiency an amount equal to the positive difference, if any, incurred by Buyer as a result of taking delivery of substitute coal at a location other than the Delivery Point between the replacement price paid less the then current Contract Price or, absent such a purchase, the market price for such Quantity of Commodity FOB the Delivery Point, as determined by Buyer in a commercially reasonable manner less the then current Contract Price. It is expressly agreed that Buyer shall not be required to enter into a replacement transaction in order to determine the Replacement Price. For the purposes of this paragraph, any Quantity of Commodity delivered in any calendar month that has been rejected by Buyer in accordance with section 10 hereof shall not be considered to have been shipped.

(b) Unless excused by Force Majeure or the Seller's failure to perform, if Buyer fails to accept 80% or more of the Quantity of Commodity to be received in any calendar month during the Term of this Agreement pursuant to the Delivery Schedule for barge deliveries, or two (2)

days of shipments for truck deliveries, or one (1) train shipment, whichever is applicable, then Buyer shall have thirty (30) days to make-up the shortfall of tons of commodity Buyer failed to accept delivery in a given month ("Make-Up Tons") without penalty to Buyer. Any shipments in any month shall be deemed to be Make-Up Tons until all deficiencies from any previous months, if applicable, are satisfied. If Buyer accepts less than (i) 80% of the Quantity of Commodity to be received hereunder pursuant to the Delivery Schedule plus (ii) the cumulative Make-Up Tons then, Seller and Buyer shall enter into "good faith" negotiations to determine a mutually agreeable make-up schedule. If after 15 days, a mutually agreeable make-up schedule has failed to be agreed upon then, Buyer shall pay to the Seller for each ton of the deficiency an amount equal to the positive difference, if any, obtained by subtracting the Market Sales Price from the then current Contract Price for the Deficiency. "Market Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells (if at all) the Deficiency (plus additional transportation charges, if any, incurred by Seller as a result of delivering Commodity to a location other than the Delivery Point) or, absent such resale, the market price for such Quantity of Commodity FOB the Delivery Point, as determined by Seller in a commercially reasonable manner. It is expressly agreed that Seller shall not be required to enter into a replacement transaction in order to determine the Sales Price. For the purposes of this paragraph, any quantity of Commodity delivered in any calendar month that has been rejected by Buyer in accordance with section 10 hereof shall not be considered to have been shipped.

17). Payment: Buyer shall self-invoice semi-monthly. Shipments made during the first through the fifteenth of each month are payable ten (10) days after the end of the month at the Contract Price. Shipments made during the sixteenth through the end of each month are payable, with quality adjustments for all Shipments loaded during the month, 25 days after the end of each month. Buyer shall pay, by electronic transfer in immediately available United States funds, the amount set forth on each invoice along with the necessary information enabling reconciliation to the relevant Shipment to the applicable payment address below:

Buyer's Billing Address:
139 E. Fourth Street, EA 502
Cincinnati, OH 45201-0960
Attn: Supervisor, Billing
Fax: (513) 419-5790

Seller's Payment Address:
Bank Name:
Account Number:
ABA number:

Counterparty Billing & Payment Address:

In the event of repeated late payments, Seller may provide Notice to Buyer that any future late and/or overdue payments shall accrue interest (at the prime rate of interest for United States Dollar as published from time to time during such period under the section titled, "Money Rates" by the Wall Street Journal, plus two percent, but not to exceed the maximum applicable lawful interest rate (hereinafter "Interest Rate") from the due date until paid.

In the event Buyer's senior unsecured or corporate credit rating falls below investment grade (BBB- as defined by Standard & Poor's or the equivalent as defined by other public ratings agencies), Buyer shall be required to provide payment in cash three Business days in advance of loading.

18). **Bankruptcy:** In the event either party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), or (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, (collectively, "Bankruptcy Proceedings"), then the other party may, at its option and in its sole discretion anytime thereafter upon written notice, terminate this agreement in whole or in part only in the event the bankruptcy is not removed or dismissed within thirty (30) days.

19). **An Event of Default ("Event of Default")** with respect to a Party (the "Defaulting Party") shall mean: (i) the failure of the Defaulting Party to pay when due any required payment and such failure is not remedied within fourteen (14) Business Days after written notice; (ii) the failure of the Defaulting Party to comply with its other material obligations under this Agreement and such failure is not remedied within fourteen (14) Business Days after written notice; (iii) a Party or its credit support provider is subject to a Bankruptcy Proceeding; or (iv) a Party suffers a Material Adverse Change and fails to provide Adequate Assurances.

20). **Material Adverse Change:** A Material Adverse Change occurs with respect to the Buyer if (i) there is any material change in the condition (financial or otherwise), net worth, assets, properties or operations, or in economic conditions, which, taken as a whole, can reasonably be anticipated to impair the ability of the Buyer to fulfill its obligations; or (ii) there is reasonable grounds to believe that the creditworthiness of the Buyer has become unsatisfactory or its ability to perform under this Agreement has been materially impaired. Seller shall have the right to deliver a written demand to Buyer (Posting Party) requiring Adequate Assurance of Buyer's ability to perform all of its obligations under this Agreement. Buyer shall deliver such Adequate Assurance (as defined below), in a form reasonably acceptable to Seller.

The amount of Adequate Assurance shall be equivalent to sixty (60) Days of accounts receivable (as defined by the Contract Price multiplied by the Contract Quantity for a two-month period) plus 180 days replacement sale of coal (as defined by the difference between the current market price and the Agreement price for a six month period determined on a net or setoff basis. This portion of the Adequate Assurance shall only have to be posted when the Agreement price is higher than the market price). The Adequate Assurance shall remain intact until Buyer's creditworthiness is restored to a level of creditworthiness equal to or better than that in effect on the date of this Agreement or the Agreement is terminated and the Buyer's obligations under the Agreement have been discharged.

Until Buyer delivers such Adequate Assurance to Seller, Seller shall have the right, without limiting any other rights that may be available to Seller, to defer or eliminate shipments due to Buyer or require payment three business days in advance of loading.

A Material Adverse Change occurs with respect to the Seller if (i) there is any material change in the condition (financial or otherwise), net worth, assets, properties or operations, or in economic conditions, which, taken as a whole, can reasonably be anticipated to impair the ability of the Seller to fulfill its obligations; or (ii) there is reasonable grounds to believe that the

creditworthiness of the Seller has become unsatisfactory or its ability to perform under this Agreement has been materially impaired, and for (i) or (ii) to become effective, the Seller also has material, unexcused reductions in shipments from the agreed upon shipment schedule.

The amount of Adequate Assurance shall be equivalent to 180 days replacement cost of coal (as defined by the difference between the current market price and the Agreement price for a six month period determined on a net or setoff basis), and shall be provided only when the market price is higher than the Agreement price. The Adequate Assurance shall remain intact until Seller's creditworthiness is restored to a level of creditworthiness equal to or better than that in effect on the date this section was made part of the Agreement, the shipment schedule is cured or the Agreement is terminated and the Seller's obligations under the Agreement have been discharged.

Until Seller delivers such Adequate Assurance to Buyer, Buyer shall have the right, without limiting any other rights that may be available to Buyer, to defer or eliminate shipments due from Seller.

"Adequate Assurances" for the Posting Party shall mean collateral in the form of cash, Letter(s) of Credit, or other security reasonably acceptable to the Requesting Party. Letter(s) of Credit means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form reasonably acceptable to the Requesting Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the Posting Party.

21). Netting: If the Parties are required to pay any amount on the same day or in the same month under this Agreement, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount may pay to the other Party the difference between the amounts owed.

22). Limitation of Liability: No waiver of remedies or damages herein shall apply to claims of anticipatory repudiation or remedies thereof provided for by law except that neither Seller nor Buyer shall be liable to the other for consequential, incidental, punitive, exemplary, special or indirect damages, lost profits, or business interruption damages, whether in equity or by statute, in tort, or in contract, under any indemnity provision or otherwise.

23). Title/ Risk of Loss: Seller warrants good title to all Commodity delivered hereunder, free and clear of all claims and encumbrance. Title and risk of loss shall pass to the Buyer upon delivery at the Delivery Point.

24). Assignment: Neither party shall assign this Agreement without the prior written consent of the other, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, either party may, without the need to consent from the other party (and without relieving itself from liability hereunder), (a) transfer, sell, pledge, encumber, or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (b) transfer or assign this Agreement to an Affiliate to such party if such affiliate has a credit rating equal to or greater than the assigning party; or (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such party by way of merger, reorganization or otherwise; *provided however*, that in each such case any such assignee shall agree in writing to be bound by terms and conditions hereof and that no such assignment shall in any way relieve the assignor from liability or full performance under

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

25). **Entire Agreement:** This Agreement is the final and entire agreement between the parties. No modification or amendment of this agreement shall be effective or binding unless set forth in writing signed by both parties.

26). **No Waiver:** Waiver of any breach of the Agreement shall not be construed as a waiver of any other breach.

27). **Governing Law:** This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana, including without limitation the Uniform Commercial Code, without giving effect to the doctrine of conflict of laws.

28). **Confidentiality:** Each party hereby acknowledges that this Agreement contains confidential information that may place such a party at a competitive disadvantage if disclosed to the public. Therefore, the terms of this Agreement shall be preserved as confidential by the parties, except to the extent disclosure may be required by law, regulation or judicial administrative order, and the parties shall employ reasonable means to effectuate such confidentiality. However, disclosure of information is permitted to a Party's affiliates, directors, employees, regulators, counsel, auditors, agents, or partners in ownership of a generation facility, provided that it is necessary to show the information to such individuals or entities due to their relationship with the Party and such individuals and entities are informed of the confidential nature of the information.

29). **Notices:** Notices under this Agreement shall be given in writing and shall be effective when received.

Notices to Buyer should be sent to:

Manager of Fuel Supply, Regulated Stations
PSI Energy, Inc.
1000 E. Main St
Plainfield, IN 46168

Notices to Seller should be sent to:

Phone:
Fax:

30). **Limitation on warranty:** EXCEPT AS EXPRESSLY SET FORTH HEREIN. SELLER EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED. INCLUDING WITHOUT LIMITATION,

ANY WARRANTY WITH RESPECT TO, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

31). Dispute Resolution

- (a). Procedure. If a dispute arises between the Parties relating to this Agreement, the Parties agree to use the following procedure prior to either Party pursuing other available remedies:
- (i) A meeting shall be held promptly between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.
 - (ii) If within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, either Party may with written notice require the other Party to arbitrate such disputes.
 - (iii) Upon written notice to the other Party, either Party may request that the matter be referred to binding arbitration before three arbitrators, one of whom shall be named by Buyer, one by Seller, and a third of whom shall be named by the two arbitrators appointed by Buyer and Seller, respectively. If either Seller or Buyer fails to select an arbitrator within fifteen (15) days after receipt of written notice from the other of its election to submit a matter to arbitration and naming its arbitrator, the Party giving such notice shall have the right to appoint an arbitrator for the Party in default; and the two thus chosen shall then select the third arbitrator. The appointment of the third arbitrator, if not agreed upon within twenty (20) days, shall be made in accordance with CPR's Rules for Non-administered Arbitration then in effect (the "Rules"). The Rules shall govern any such proceedings. Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Each Party shall pay for the services and expenses of the arbitrator appointed by it and for its costs, expenses, and attorneys' fees. Fees and expenses of the third arbitrator and court reporter shall be paid in equal parts by the Parties hereto.
- (b). Proceedings. All negotiation and arbitration proceedings shall be strictly confidential and used solely for the purposes of settlement. Any materials prepared by one Party for those proceedings shall not be used as evidence by the other Party in any subsequent arbitration or legal proceeding. All arbitration proceedings shall also be strictly confidential.
- (c). Clarity of Obligations. Each Party fully understands its specific obligations under the provisions of this Section. Neither Party considers such obligations to be in any way unenforceable, and neither Party will contend to the contrary at any future time or in any future proceeding.

32). On the Effective Date hereof, each Party represents and warrants to the other that:

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

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

(c) It, or its affiliates, have, or will diligently pursue, any and all necessary governmental and other third party permits, approvals and licenses required in connection with the execution, delivery and performance of this Agreement;

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

(e) There are no known suits, proceedings, judgments rulings or orders by or before any court or any governmental authority that materially adversely affect its ability to perform its obligations under this Agreement;

(f) With respect to this Agreement, it, or its affiliates, are a producer, processor, commercial user or merchant handling Coal, and it is entering into such Agreement for purposes related to its business as such.

THE PARTIES, BY THEIR AUTHORIZED AGENTS, HEREBY EXECUTE THIS COAL SUPPLY AGREEMENT WHICH SHALL BE EFFECTIVE ON THE DATE FIRST ABOVE WRITTEN.

THE UNION LIGHT, HEAT AND POWER COMPANY

BY: V.E. Strand
TITLE: Vice President
DATE: 12/29/05

BY: _____
TITLE: _____
DATE: 12/30/05

**Schedule 1
Standard to Confirmation: Specifications**

ILB 12,100 Btu Product

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

<u>Specification</u>	<u>Guaranteed Quality Monthly Weighted Average</u>	<u>Shipment Rejection Limits (Per Barge)</u>
BTU/LB.	12,100	< 11,500 () < 11,000 () < 10,800 ()
MOISTURE	10.0%	
ASH	10.0%	> 13.0%
Lb.s SO ₂ /mmbtu	5.00	> 6.60
VOLATILE	35%	
Size (2" x 0"):		
-- Top size (inches)*	<2"	
-- Fines (% by wgt)		
Passing 1/4" screen	< 55%	
GRINDABILITY (HGI)	54	< 52
<u>ASH FUSION TEMPERATURE (°F) (ASTM D1857)</u>		
<u>REDUCING ATMOSPHERE</u>		
Initial Deformation		
Softening (H=W)	2050° min	
Softening (H=1/2W)		
Fluid		

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

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

Table A

**The Union Light Heat and Power Company
Embedded Escalation Deadband
2006-2008**

<u>Escalation Date</u>	<u>EMBEDDED ESCALATION DEADBAND</u>	
	<u>Quarterly Increase</u>	<u>Cumulative Increase</u>
Jan 1 - 2006	\$	\$
Apr 1 - 2006	\$	\$
Jul 1 - 2006	\$	\$
Oct 1 - 2006	\$	\$
Jan 1 - 2007	\$	\$
Apr 1 - 2007	\$	\$
Jul 1 - 2007	\$	\$
Oct 1 - 2007	\$	\$
Jan 1 - 2008	\$	\$
Apr 1 - 2008	\$	\$
Jul 1 - 2008	\$	\$
Oct 1 - 2008	\$	\$

* Based on 2% deadband for a \$ \$ and \$ price for 2006, 2007 and 2008, respectively

Exhibit A

**The Union Light Heat and Power Company
Hypothetical Escalation Adjustment
Apr-06**

Base Price	\$
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<u>Index Utilized</u>	<u>Index Weight</u>	<u>Year One Base Amount</u>	<u>Base ⁽¹⁾ Index</u>	<u>Revised ⁽²⁾ Index</u>	<u>Adjustment Amount</u>	<u>Adjusted Base Price</u>
CPI (W)	35%	\$				
PPI Industrial Commodities - Less Fuel & Pwr	20%	\$				
#2 Diesel Fuel	3%	\$				
Steel	12%	\$				
Prime Rate	15%	\$				
GDP - IPD	15%	\$				
Embedded Escalation Deadband ⁽³⁾						
					\$ ⁽⁴⁾	
50% of Adjusted Amount					\$ ⁽⁵⁾	
Total		\$			\$	\$

- ⁽¹⁾ Base indices as established per Coal Supply Agreement.
- ⁽²⁾ Hypothetical Index for the date established in Coal Supply Agreement.
- ⁽³⁾ Per Section 12 of Coal Supply Agreement and Table A, Cumulative Increase.
- ⁽⁴⁾ The sum of the above adjustments or zero, which ever is greater.
- ⁽⁵⁾ 50% of Adjusted Amount - Adjustment shall be shared equally by both parties.

FOR ILLUSTRATION PURPOSES ONLY

Exhibit A

**The Union Light Heat and Power Company
Hypothetical Escalation Adjustment
Jan-07**

Base Price	\$
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<u>Index Utilized</u>	<u>Index Weight</u>	<u>Year One Base Amount</u>	<u>Base ⁽¹⁾ Index</u>	<u>Revised ⁽²⁾ Index</u>	<u>Adjustment Amount</u>	<u>Adjusted Base Price</u>
CPI (W)	35%	\$				
PPI Industrial Commodities - Less Fuel & Pwr	20%	\$				
#2 Diesel Fuel	3%	\$				
Steel	12%	\$				
Prime Rate	15%	\$				
GDP - IPD	15%	\$				
Embedded Escalation Deadband ⁽³⁾					('')	
					\$ - ⁽⁴⁾	
50% of Adjusted Amount					\$ - ⁽⁵⁾	
Total		\$			\$ -	\$

- ⁽¹⁾ Base indices as established per Coal Supply Agreement.
- ⁽²⁾ Hypothetical Index for the date established in Coal Supply Agreement.
- ⁽³⁾ Per Section 12 of Coal Supply Agreement and Table A, Cumulative Increase.
- ⁽⁴⁾ The sum of the above adjustments or zero, which ever is greater.
- ⁽⁵⁾ 50% of Adjusted Amount - Adjustment shall be shared equally by both parties.

FOR ILLUSTRATION PURPOSES ONLY

Exhibit A

**The Union Light Heat and Power Company
Hypothetical Escalation Adjustment
Jan-08**

Base Price	\$
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<u>Index Utilized</u>	<u>Index Weight</u>	<u>Year One Base Amount</u>	<u>Base ⁽¹⁾ Index</u>	<u>Revised ⁽²⁾ Index</u>	<u>Adjustment Amount</u>	<u>Adjusted Base Price</u>
CPI (W)	35%	\$				
PPI Industrial Commodities - Less Fuel & Pwr	20%	\$				
#2 Diesel Fuel	3%	\$				
Steel	12%	\$				
Prime Rate	15%	\$				
GDP - IPD	15%	\$				
Embedded Escalation Deadband ⁽³⁾		<u> </u>			<u> </u> (4)	
50% of Adjusted Amount		<u> </u>			<u> </u> (5)	
Total		<u>\$</u>			<u>\$</u>	<u>\$</u>

- (1) Base indices as established per Coal Supply Agreement.
- (2) Hypothetical Index for the date established in Coal Supply Agreement.
- (3) Per Section 12 of Coal Supply Agreement and Table A, Cumulative Increase.
- (4) The sum of the above adjustments or zero, which ever is greater.
- (5) 50% of Adjusted Amount - Adjustment shall be shared equally by both parties.

FOR ILLUSTRATION PURPOSES ONLY

Coal Supply Agreement

Coal Seller:

Counterparty Name

Attn:

Tel.

Fax.

Ref #: _____

Coal Buyer:

Counterparty Name

Tyrone Synfuels, L.P.

160 Quality Center Road

Homer City, PA 15748

Attn: Clark Harrison

Tel. 724-479-6016

Fax. 724-479-4181

Ref #: _____

This Agreement, by and between _____, a Delaware limited liability company (hereinafter "Seller"), and Tyrone Synfuels, LP a Delaware limited partnership (hereinafter "Buyer"), effective January 1, 2006 ("Effective Date") establishes the terms and conditions for the sale and purchase of coal (The "Agreement"). Seller and Buyer can be individually referred to as a "Party" or collectively as "Parties."

1). **Commodity:** Crushed, bituminous Coal, substantially free from any extraneous material and debris, with no intermediate sizes to be added or removed and otherwise meeting the Specifications of this Agreement (hereinafter "Coal" or "Commodity").

2). **Product:** 2" X 0" ILB 12,100 btu, 5.0 #SO2

3). **Term:** The effective date of this agreement is January 1, 2006 and it shall remain in effect until the date that is the earlier of (i) thirty (30) days after the date on which either Party gives written notice to the other Party of its election to terminate this Agreement, (ii) December 31, 2007, or (iii) the date on which the Synfuel Sales Agreement between The Cincinnati Gas & Electric Company, as assigned to and assumed by The Union Light, Heat and Power Company, and Buyer dated March 11, 2004 terminates (the "Synfuel Termination Date"). Following any termination pursuant to clause (i) and (ii) above, this Agreement and any relevant purchase order shall remain in effect with respect to any purchase entered into on or prior to the termination date until each Party has fulfilled all of its obligations with respect to all such purchases, or, if earlier, the Synfuel Termination Date. All purchases entered into prior to the Synfuel Termination Date shall terminate on the Synfuel Termination Date. No deliveries of coal shall be made to Buyer following the Synfuel Termination Date. No termination of this Agreement shall affect or excuse the performance of any party under any provision of this Agreement that by its terms survives any such termination, including, without limitation, Buyer's obligation to pay for coal delivered on or before the termination date.

4). Buyer has the option to purchase coal at the following Quantity (in tons):

2006 Up to :
2007 Up to :

Quantity shall be ratable throughout the term of this Agreement.

5). Scheduling: All coal sold hereunder shall ultimately be delivered, pursuant to Buyer's synfuel agreement with ULH&P, from the Delivery Points to ULH&P 's East Bend Station located in Rabbit Hash, Ky. Buyer will advise Seller on or before the 15th day of each calendar month preceding scheduled shipments of the number of barges it desires to load during the succeeding calendar month to fulfill the transaction Quantity and Buyer's desired loading dates and delivery schedule ("Delivery Schedule"). Seller will advise Buyer on or before the 25th day of the month preceding shipment of its Source mine(s)/loadout(s) for the scheduled monthly shipment(s). The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule within the Nomination Period and within each month during the Nomination Period. All deliveries will occur in approximate ratable amounts over the term of a transaction. The delivery period shall begin no earlier than the first day of the delivery month and at least seven (7) days before the end of the month. Delivery must be completed by the last day of the delivery month.

6). Nomination Period Monthly

7). Source(s):

Approved Sources:

Mine:
Mine Operating Co.:
Mine State:
Mine County:
Delivery Point:

Mine:
Mine Operating Co.:
Mine State:
Mine County:
Delivery Point:

Mine:
Mine Operating Co.:
Mine State:
Mine County:
Delivery Point:

Mine:
Mine Operating Co.:
Mine State:
Mine County:
Delivery Point:

Mine:
Mine Operating Co.:
Mine State:
Mine County:
Delivery Point:

8). Delivery Points: F.O.B. barge @ the mile post for the appropriate Source referenced in Section 7 above.

9). Contract Price: Prices below are dollars per ton f.o.b. barge at Delivery Point. In the event that the Delivery Point is other than the Price shall be adjusted to reflect any actual increased costs of transportation from the alternative Source. Price shall include all taxes, fees and proper charges, and shall be subject to quality adjustments as provided for in Section 12 herein. Prices, however, are not inclusive of harbor switching and fleeting charges which shall be the responsibility of Buyer.

<u>CY</u>	<u>\$/ton</u>
2006	\$
2007	\$

10). Specifications: Per Attached Schedule 1 (Standard)

Buyer may reject any Shipment falling outside of the aforementioned Rejection Specifications, shipments that may cause handling problems or shipments that are contaminated with foreign materials with written notification to Seller. Buyer shall return Coal to Seller at Seller's cost. Seller shall make reasonable efforts to replace the rejected Coal no later than the last calendar day of the delivery month.

11). Sampling and Analysis: Seller shall sample and analyze Commodity at Delivery Point at its expense. Sampling shall be carried out following the American Society of Testing and Materials (ASTM) standard, as set forth in ASTM standard D2234 (Type I, condition C, Part-Stream Cut). Analysis is to be done in accordance with applicable ASTM standards. Such analysis shall be final and binding and shall govern for payment. Seller shall provide analysis to Buyer within 48 hours of loading Commodity into the barge except for weekends or holidays in which analysis will be provided by the second business day thereafter.

Seller shall make available sample splits and a report of each sample's quality for Buyer upon request. Buyer, at its expense, may make arrangements to pick up samples. Seller shall retain,

for a period of 60 days from the loading date, sample splits taken in accordance with the provisions of this Agreement for use by Buyer and the independent laboratory specified below.

In the event of a disagreement over Commodity analysis and upon Buyer and Seller selecting a mutually agreed upon independent laboratory, Seller shall provide sample splits to the independent laboratory for analysis. Such analysis shall be accepted as the quality of Commodity received. The cost of the independent analysis shall be equally shared between Buyer and Seller.

12). Adjustments:

(a) Quality Adjustments:

BTU Premium/Penalty Price Adjustment:

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

SO2 Premium/Penalty Price Adjustment:

The contracted SO2 content shall be 5.0 lbs. SO2 per million Btu on a monthly weighted average basis. SO2 Price adjustments shall not apply until the monthly weighted average SO2 falls outside the deadband of 4.80 lbs. SO2 and 5.20 lbs. SO2.

For purposes of this Agreement, a lb. of SO2 shall equal $\frac{\text{AR S\%} \times 20,000}{\text{AR Btu/lb}}.$

Should the monthly weighted average SO2 of the Commodity fall outside the deadband, the Contract Price will be adjusted, on a monthly basis, to reflect actual SO2 value received according to the following formula:

$\$/\text{ton} = ((5.0 \text{ lbs SO2/mmbtu} - \text{Monthly Weighted Average Actual lbs. SO2/mmtbu}) \times \text{Monthly Weighted Average Actual Btu/lb}) \times ((\text{Spot Price of SO2 Emission Allowances} \times .08) + \$85) / 1,000,000$

Where: Spot price of SO2 Emission Allowances for any given delivery month means the 3 days average SO2 Price of allowances expressed in dollars per ton of SO2 in the table entitled "Daily Market Assessments, SO2 Allowances, Price for current vintage year" published in Energy Argus Air Daily, or its successor publication, as published on the 3rd, 4th and 5th business days of the subsequent month (e.g., spot price for allowances for January 2006 would be calculated by using an average of the daily market assessment price for the 2006 vintage year published in Energy Argus Air Daily on February 3rd, 6th and 7th)

Ash Premium/Penalty Price Adjustment:

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

For illustrative purposes, should the Monthly Weighted Average Actual Ash % equal 9.0% in a given month, the ash premium for the month would be \$.50/ton calculated as follows: $[(10.0\% \text{ MWAG} - 9.0\% \text{ MWAA}) \times \$0.50].$

Price adjustments shall be made to the nearest \$0.001 and calculated on a monthly weighted average.

(b) Price Adjustment for Changes in Law: Buyer and Seller agree that if any federal, state, or local governmental authority, subsequent to January 14, 2005, (a) enacts, promulgates or otherwise makes effective any new statute ordinance, regulation or rule, including, but not limited to, any tax mandate, or (b) amends, modifies, or changes in any way the text, interpretation or application of any existing statute, ordinance, regulation or rule including, but not limited to, any tax mandate relative to Seller's performance of this Agreement (collectively referred to herein as "Change in Laws" (but in either case not including any statute, ordinance, regulation, rule, or other governmental mandate existing as of January 14, 2005 that has a scheduled modification or termination date), and if such Change in Laws directly or indirectly increase(s) or decreases Seller's cost of performance of this Agreement then the current selling price shall be adjusted upward or downward by the amount of such change on the effective date such change occurs. Buyer shall have the right to audit Seller's books and records to determine the amount of any upward or downward price adjustment under this section.

(c) Price Adjustment for Escalation: The Base Price shall be adjusted according to the price adjustment provisions in this Agreement (rounded to the nearest hundredth) and shall be referred to herein as the "Adjusted Base Price."

The Base Price per ton shall be increased or decreased for each percentage point of change, or proportionately for fractional parts of a percentage point of change, to reflect changes in the following indices. The Base Price will be allocated per the index weights detailed below. Changes shall become effective quarterly as of January 1, April 1, July 1, and October 1 of each year, beginning April 1, 2006, and shall be based upon the preliminary indices for November, February, May and August, respectively. The index base and base amounts shall be the following:

	<u>Index Weight</u>	<u>Index Base</u>	
CPI(W) (BLS Series Id cuur0000sa0)	35%	190.7	Preliminary January 2005
PPI Industrial Commodities -Less Fuel & Pwr* (BLS Series Id wpu03t15m05)	20%	156.5	Preliminary January 2005
#2 Diesel Fuel* (BLS Series ID wpu057303)	3%	141.1	Preliminary January 2005
Steel (BLS Series Id WPU1026)	12%	160.0	Preliminary January 2005
Prime Rate***	15%	5.25	Actual December 31, 2004
GDP-IPD**	15%	109.100	Final Q4 2004

*U.S. Department of Labor, Bureau of Labor Statistics, Not Seasonally Adjusted

**U.S. Department of Commerce, Bureau of Economic Analysis, Price Indexes for Gross Domestic Product, / Table 6 / Seasonally Adjusted

***Prime Rate of interest as reported in the money rates section of the Wall Street Journal on the fifteenth (15th) day of the last month in the quarter prior to the applicable price adjustment effective date or first business day thereafter - - as published on the subsequent business day.

Embedded Escalation Deadband

The impact of the quarterly escalations, on a net basis, shall not impact the Base Price until they exceed the Embedded Escalation Deadband designated in Table A on a quarterly basis. Any adjustment exceeding the 2% deadband shall be shared equally by Parties. Exhibit A illustrates a hypothetical example of an escalation calculation.

Minimum Adjustments

However, in no event shall the Adjusted Base price at any time be lower than the Base Price, by calendar year, as listed in paragraph 9 above.

Change or Discontinuance of Indices

If the basis for any of the index numbers is changed, said index shall be adjusted to take into account such changed basis. In the event any designated index is discontinued or altered, becomes unavailable, or is no longer applicable, the Parties shall undertake to agree on a substitute index or a substitute method of cost adjustment which most closely matches the economic structure of the discontinued or altered index. If the Parties fail to reach agreement on the substitute index or method within 90 days, then the substitute index or substitute method of cost adjustment shall be submitted to arbitration and resolved.

Rounding

The values to perform the calculations shall be rounded to two decimal places.

13). **Weight Determination:** The weight of each barge Shipment shall be determined by a composite of all trucks that were dumped directly into that particular barge using Seller's certified truck scales, or if not available, by draft survey taken at the Source at Seller's expense, or if neither of these are available by Buyer's unloaded weights at its destination. Seller assures Buyer that all coal transferred from truck to the barge shall not at any time touch the ground once the truck has been weighed. Buyer, upon request, reserves the right to view any and all truck weight tickets. Seller represents that its truck scales shall be calibrated on at least a semiannual basis. Such weights shall be final and binding and shall govern for payment.

General Terms and Conditions

14). **Force Majeure:** If a Party is delayed in or prevented from performing, in whole or in part, any of its obligations due to acts of God, war, riots, civil insurrection, threats of violence, acts of the public enemy, terrorism, nuclear disasters, strikes, lockouts, labor shortages and disputes, disturbances or unrest, damage to mines or plants, inability to procure supplies or

equipment, breakdown of equipment or facilities, fires, explosions, floods, river freeze-up, earthquakes, inability to obtain permits or authorizations from any governmental authority after prudent and timely submission and application for same, or unforeseen geologic conditions in coal seams not discernable by prudent engineering or other causes that are beyond the reasonable control and without the fault or negligence of the Party affected or Party's coal supplier or resale customer thereby (such events being referred to herein as "Force Majeure"), and such Party gives oral notice within 10 days and full details of the Force Majeure to the other Party within ninety (90) days after the occurrence of the event of Force Majeure (such notice to be confirmed in writing), then during the pendency of such Force Majeure but for no longer period, the obligations of the Parties (other than obligations to make payments then due) shall be suspended to the extent required by the event. The Party affected by the Force Majeure shall remedy the Force Majeure with all reasonable dispatch and will keep the other Party advised as to the continuance of the Force Majeure event; provided however, that this provision shall not require Seller to deliver, or Buyer to receive, the Commodity at points other than the Delivery Point for the authorized Source including allowable substitutions under the Transaction. A change in market conditions including the ability of Seller to sell Commodity at a higher price, or Buyer or Buyer's customer to buy Commodity at a lower price, whether or not foreseeable shall not be considered a Force Majeure event. If an event of complete or partial Force Majeure persists for a continuous period of sixty (60) days, then the Party not claiming Force Majeure shall have the option, upon three (3) days' prior written notice, to terminate this transaction to the extent affected and the associated obligations of the Parties (other than payment obligations for prior performance thereunder). In the event of a Force Majeure, delivery of the affected Quantity of Commodity shall not be made up except by mutual agreement of the Buyer and Seller. If Seller claims Force Majeure and is unable to meet all of its sales obligations under this Agreement and any other of its Commodity sales agreements involving Commodity of a similar type and quality as the Commodity from the affected Source, or if Buyer claims Force Majeure and is unable to meet all of its purchase obligations under this Agreement and any other of its Commodity purchase agreements involving Commodity of a similar type and quality as the Commodity, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated on a pro rata basis among the affected transaction(s) and such other Commodity supply or purchase agreements involving Commodity of the same type and quality as the Commodity, to the extent contractually permitted by such transaction(s) and agreement(s). An event of Force Majeure affecting the _____ shall be deemed an event of Force Majeure affecting Seller. An event of Force Majeure affecting the East Bend Station shall be deemed an event of Force Majeure affecting Buyer.

15). **Environmental Law Force Majeure:** If any new environmental law is enacted or new regulation is promulgated which becomes effective during the term of this Agreement, that would not have been reasonably known as of the effective date of this agreement, Buyer and Seller shall first make all reasonable efforts to change its operations or equipment in order to continue utilizing the maximum amount of coal meeting the existing coal quality specifications under the Agreement. If after all such reasonable efforts have been made Buyer cannot continue to utilize all of the coal to be delivered hereunder, Buyer may reduce coal shipments hereunder on a pro-rata basis with any/all of Buyer's contracts utilizing similar coal, notwithstanding Section 12(b).

If as a result, Seller's contract tonnage is reduced hereunder, then Buyer shall promptly notify Seller, in writing, of the new required coal quality specifications for any replacement tonnage. Seller shall consider and evaluate what steps can be reasonably taken to meet the new coal quality specifications. Buyer and Seller agree to negotiate in good faith towards a new agreement or an amendment of this Agreement based on such environmental changes in law.

Changes in market conditions, commercial frustration, commercial impracticability or the occurrence of unforeseen events rendering performance of this Agreement uneconomical for Buyer, shall not constitute a new environmental law or regulation

16). **Damages:** (a) Unless excused by Force Majeure, or Buyer's failure to perform, and in the event that Seller delivers 80% or more of the Quantity of Commodity to be delivered in any calendar month during the Term of this Agreement pursuant to the Delivery Schedule, for barge deliveries, or two (2) days of shipments for truck deliveries, or one (1) train shipment, whichever is applicable, then Seller shall have thirty (30) days to make-up the shortfall of tons of Coal Seller failed to deliver in given month ("Make-Up Tons") without penalty to Seller. Any shipments in any month shall be deemed to be Make-Up Tons until all deficiencies from any previous months, if applicable, are satisfied. Unless excused by Force Majeure, or Buyer's failure to perform, if Seller delivers less than (i) 80% of the Quantity of Commodity to be delivered hereunder pursuant to the Delivery Schedule plus (ii) the cumulative Make-Up Tons then, Buyer and Seller shall enter into "good faith" negotiations to determine a mutually agreeable make-up schedule. If after 15 days, a mutually agreeable make-up schedule has failed to be agreed upon, then Seller shall pay to the Buyer for each ton of the deficiency an amount equal to the positive difference, if any, incurred by Buyer as a result of taking delivery of substitute coal at a location other than the Delivery Point between the replacement price paid less the then current Contract Price or, absent such a purchase, the market price for such Quantity of Commodity FOB the Delivery Point, as determined by Buyer in a commercially reasonable manner less the then current Contract Price. It is expressly agreed that Buyer shall not be required to enter into a replacement transaction in order to determine the Replacement Price. For the purposes of this paragraph, any Quantity of Commodity delivered in any calendar month that has been rejected by Buyer in accordance with section 10 hereof shall not be considered to have been shipped.

(b) Unless excused by Force Majeure or the Seller's failure to perform, if Buyer fails to accept 80% or more of the Quantity of Commodity to be received in any calendar month during the Term of this Agreement pursuant to the Delivery Schedule for barge deliveries, or two (2) days of shipments for truck deliveries, or one (1) train shipment, whichever is applicable, then Buyer shall have thirty (30) days to make-up the shortfall of tons of commodity Buyer failed to accept delivery in a given month ("Make-Up Tons") without penalty to Buyer. Any shipments in any month shall be deemed to be Make-Up Tons until all deficiencies from any previous months, if applicable, are satisfied. If Buyer accepts less than (i) 80% of the Quantity of Commodity to be received hereunder pursuant to the Delivery Schedule plus (ii) the cumulative Make-Up Tons then, Seller and Buyer shall enter into "good faith" negotiations to determine a mutually agreeable make-up schedule. If after 15 days, a mutually agreeable make-up schedule has failed to be agreed upon then, Buyer shall pay to the Seller for each ton of the deficiency an amount equal to the positive difference, if any, obtained by subtracting the Market Sales Price from the then current Contract Price for the Deficiency. "Market Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells (if at all) the Deficiency (plus additional transportation charges, if any, incurred by Seller as a result of delivering Commodity to a location other than the Delivery Point) or, absent such resale, the market price for such Quantity of Commodity FOB the Delivery Point, as determined by Seller in a commercially reasonable manner. It is expressly agreed that Seller shall not be required to enter into a replacement transaction in order to determine the Sales Price. For the purposes of this paragraph, any quantity of Commodity delivered in any calendar month that has been rejected by Buyer in accordance with section 10 hereof shall not be considered to have been shipped.

17). **Payment:** Buyer will self-invoice semi-monthly. Shipments made during the first through the fifteenth of each month are payable ten (10) days after the end of the month at the

Contract Price. Shipments made during the sixteenth through the end of each month are payable, with quality adjustments for all Shipments loaded during the month, twenty five (25) days after the end of each month. Buyer shall pay, by electronic transfer in immediately available United States funds, the amount set forth on each invoice along with the necessary information enabling reconciliation to the relevant Shipment to the applicable payment address below:

Buyer's Billing Address:

139 E. Fourth Street, EA 502
Cincinnati, OH 45201-0960
Attn: Supervisor, Billing
Fax: (513) 419-5790

Seller's Payment Address:

Bank Name:
Account Number:
ABA number:

Counterparty Billing & Payment Address:

Buyer hereby represents and warrants to Seller that pursuant to the Synthetic Fuel and Coal Supply Agreement dated March 11, 2004 between The Cincinnati Gas & Electric Company ("CG&E") as assigned to and assumed by The Union Light, Heat and Power Company ("ULH&P") and Buyer, ULH&P is obligated to make all payments to Buyer under such agreement to Buyer's depository account at _____ (the "Bank"), Account No. _____ (the "Account"). Buyer hereby covenants that it will not modify such provisions of the Synthetic Fuel Supply Agreement without Seller's prior written consent. Buyer hereby grants to Seller a security interest in and to the Account. Bank, Buyer and ULH&P, in its capacity as Agent for Supplier and all of the Other Suppliers, has entered into a Control Agreement in the form attached hereto as Exhibit A pursuant to which Seller's security interest in and to the Account is perfected. ULH&P shall, on or prior to the Effective Date of this Agreement, take assignment and assume all obligations of CG&E under the Control Agreement. Seller hereby appoints ULH&P as its Agent for purposes of controlling the Account. ULH&P has accepted such appointment and agreed that it shall make payments from the Account to Seller pursuant to the invoices submitted by Seller to Buyer on the 10th and 25th business day of each calendar month, or if the Bank shall be closed on such date, the next day that the Bank is open. On each payment date, the security interest of Seller shall be *pari passu* with the security interests of all other suppliers of coal to Buyer (the "Other Suppliers"), and if the funds in the Account are not sufficient to pay the amounts payable to each of the Other Suppliers in full, then Agent shall make payment pro rata to each of Supplier and the Other Suppliers.

In the event of repeated late payments, Seller may provide Notice to Buyer that any future late and/or overdue payments shall accrue interest (at the prime rate of interest for United States Dollar as published from time to time during such period under the section titled, "Money Rates" by the Wall Street Journal, plus two percent, but not to exceed the maximum applicable lawful interest rate (hereinafter "Interest Rate") from the due date until paid.

In the event Agent's senior unsecured or corporate credit rating falls below investment grade (BBB- as defined by Standard & Poor's or the equivalent as defined by other public ratings agencies), Agent's shall be required to provide payment in cash three Business days in advance of loading.

18). **Bankruptcy:** In the event either party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), or (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, (collectively, "Bankruptcy Proceedings"), then the other party may, at its option and in its sole discretion anytime thereafter upon written notice, terminate this agreement in whole or in part only in the event the bankruptcy is not removed or dismissed within thirty (30) days.

19). **An Event of Default ("Event of Default")** with respect to a Party (the "Defaulting Party") shall mean: (i) the failure of the Defaulting Party to pay when due any required payment and such failure is not remedied within fourteen (14) Business Days after written notice; (ii) the failure of the Defaulting Party to comply with its other material obligations under this Agreement and such failure is not remedied within fourteen (14) Business Days after written notice; (iii) a Party or its credit support provider is subject to a Bankruptcy Proceeding; or (iv) a Party suffers a Material Adverse Change and fails to provide Adequate Assurances.

20). **Material Adverse Change:** A Material Adverse Change occurs with respect to the Buyer if (i) there is any material change in the condition (financial or otherwise), net worth, assets, properties or operations, or in economic conditions, which, taken as a whole, can reasonably be anticipated to impair the ability of the Buyer to fulfill its obligations; or (ii) there is reasonable grounds to believe that the creditworthiness of the Buyer has become unsatisfactory or its ability to perform under this Agreement has been materially impaired. Seller shall have the right to deliver a written demand to Buyer (Posting Party) requiring Adequate Assurance of Buyer's ability to perform all of its obligations under this Agreement. Buyer shall deliver such Adequate Assurance (as defined below), in a form reasonably acceptable to Seller.

The amount of Adequate Assurance shall be equivalent to sixty (60) Days of accounts receivable (as defined by the Contract Price multiplied by the Contract Quantity for a two-month period) plus 180 days replacement sale of coal (as defined by the difference between the current market price and the Agreement price for a six month period determined on a net or setoff basis. This portion of the Adequate Assurance shall only have to be posted when the Agreement price is higher than the market price). The Adequate Assurance shall remain intact until Buyer's creditworthiness is restored to a level of creditworthiness equal to or better than that in effect on the date of this Agreement or the Agreement is terminated and the Buyer's obligations under the Agreement have been discharged.

Until Buyer delivers such Adequate Assurance to Seller, Seller shall have the right, without limiting any other rights that may be available to Seller, to defer or eliminate shipments due to Buyer or require payment three business days in advance of loading.

A Material Adverse Change occurs with respect to the Seller if (i) there is any material change in the condition (financial or otherwise), net worth, assets, properties or operations, or in economic conditions, which, taken as a whole, can reasonably be anticipated to impair the ability of the

Seller to fulfill its obligations; or (ii) there is reasonable grounds to believe that the creditworthiness of the Seller has become unsatisfactory or its ability to perform under this Agreement has been materially impaired, and for (i) or (ii) to become effective, the Seller also has material, unexcused reductions in shipments from the agreed upon shipment schedule.

The amount of Adequate Assurance shall be equivalent to 180 days replacement cost of coal (as defined by the difference between the current market price and the Agreement price for a six month period determined on a net or setoff basis), and shall be provided only when the market price is higher than the Agreement price. The Adequate Assurance shall remain intact until Seller's creditworthiness is restored to a level of creditworthiness equal to or better than that in effect on the date this section was made part of the Agreement, the shipment schedule is cured or the Agreement is terminated and the Seller's obligations under the Agreement have been discharged.

Until Seller delivers such Adequate Assurance to Buyer, Buyer shall have the right, without limiting any other rights that may be available to Buyer, to defer or eliminate shipments due from Seller.

"Adequate Assurances" for the Posting Party shall mean collateral in the form of cash, Letter(s) of Credit, or other security reasonably acceptable to the Requesting Party. Letter(s) of Credit means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form reasonably acceptable to the Requesting Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the Posting Party.

21). Netting: If the Parties are required to pay any amount on the same day or in the same month under this Coal Agreement, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount may pay to the other Party the difference between the amounts owed.

22). Limitation of Liability: No waiver of remedies or damages herein shall apply to claims of anticipatory repudiation or remedies thereof provided for by law except that neither Seller nor Buyer shall be liable to the other for consequential, incidental, punitive, exemplary, special or indirect damages, lost profits, or business interruption damages, whether in equity or by statute, in tort, or in contract, under any indemnity provision or otherwise.

23). Title/ Risk of Loss: Seller warrants good title to all Coal delivered hereunder, free and clear of all claims and encumbrance. Title and risk of loss shall pass to the Buyer upon delivery at the Delivery Point.

24). Assignment: Neither party shall assign this Agreement without the prior written consent of the other, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, either party may, without the need to consent from the other party (and without relieving itself from liability hereunder), (a) transfer, sell, pledge, encumber, or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (b) transfer or assign this Agreement to an Affiliate to such party if such affiliate has a credit rating equal to or greater than the assigning party; or (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such party by way of merger, reorganization or otherwise; *provided however*, that in each such case any such assignee shall agree in writing to be bound by terms and conditions hereof and that

no such assignment shall in any way relieve the assignor from liability or full performance under this Agreement. "Affiliate" means, with respect to any person, any other person (other than an individual) that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of 50% or more of the outstanding capital stock or other equity interests having ordinary voting power.

25). Entire Agreement: This Agreement is the final and entire agreement between the parties. No modification or amendment of this agreement shall be effective or binding unless set forth in writing signed by both parties.

26). No Waiver: Waiver of any breach of the Agreement shall not be construed as a waiver of any other breach.

27). Governing Law: This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana, including without limitation the Uniform Commercial Code, without giving effect to the doctrine of conflict of laws.

28). Confidentiality: Each party hereby acknowledges that this Agreement contains confidential information that may place such a party at a competitive disadvantage if disclosed to the public. Therefore, the terms of this Agreement shall be preserved as confidential by the parties, except to the extent disclosure may be required by law, regulation or judicial administrative order, and the parties shall employ reasonable means to effectuate such confidentiality. However, disclosure of information is permitted to a Party's affiliates, directors, employees, regulators, counsel, auditors, agents, or partners in ownership of a generation facility, provided that it is necessary to show the information to such individuals or entities due to their relationship with the Party and such individuals and entities are informed of the confidential nature of the information.

29). Notices: Notices under this Agreement shall be given in writing and shall be effective when received.

Notices to Buyer should be sent to:

Manager of Fuel Supply, Regulated Stations
PSI Energy, Inc.
1000 E. Main St
Plainfield, IN 46168

Notices to Seller should be sent to:

Phone:
Fax:

30). Limitation on warranty: EXCEPT AS EXPRESSLY SET FORTH HEREIN. SELLER EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED. INCLUDING

WITHOUT LIMITATION, ANY WARRANTY WITH RESPECT TO, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

31). Dispute Resolution

A. Procedure. If a dispute arises between the Parties relating to this Agreement, the Parties agree to use the following procedure prior to either Party pursuing other available remedies:

- (i) A meeting shall be held promptly between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.
- (ii) If within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, either Party may with written notice require the other Party to arbitrate such dispute.
- (iii) Upon written notice to the other Party, either Party may request that the matter be referred to binding arbitration before three arbitrators, one of whom shall be named by Buyer, one by Seller, and a third of whom shall be named by the two arbitrators appointed by Buyer and Seller, respectively. If either Seller or Buyer fails to select an arbitrator within fifteen (15) days after receipt of written notice from the other of its election to submit a matter to arbitration and naming its arbitrator, the Party giving such notice shall have the right to appoint an arbitrator for the Party in default; and the two thus chosen shall then select the third arbitrator. The appointment of the third arbitrator, if not agreed upon within twenty (20) days, shall be made in accordance with CPR's Rules for Non-administered Arbitration then in effect (the "Rules"). The Rules shall govern any such proceedings. Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Each Party shall pay for the services and expenses of the arbitrator appointed by it and for its costs, expenses, and attorneys' fees. Fees and expenses of the third arbitrator and court reporter shall be paid in equal parts by the Parties hereto.

B. Proceedings. All negotiation and arbitration proceedings shall be strictly confidential and used solely for the purposes of settlement. Any materials prepared by one Party for those proceedings shall not be used as evidence by the other Party in any subsequent arbitration or legal proceeding. All arbitration proceedings shall also be strictly confidential.

C. Clarity of Obligations. Each Party fully understands its specific obligations under the provisions of this Section. Neither Party considers such obligations to be in any way unenforceable, and neither Party will contend to the contrary at any future time or in any future proceeding.

32). On the Effective Date hereof, each Party represents and warrants to the other that:

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

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

(c) It, or its affiliates, have, or will diligently pursue, any and all necessary governmental and other third party permits, approvals and licenses required in connection with the execution, delivery and performance of this Agreement;

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

(e) There are no known suits, proceedings, judgments rulings or orders by or before any court or any governmental authority that materially adversely affect its ability to perform its obligations under this Agreement;

(f) With respect to this Agreement, it, or its affiliates, are a producer, processor, commercial user or merchant handling Coal, and it is entering into such Agreement for purposes related to its business as such.

33). **Buyer's Consultant.** Pursuant to the Coal Consulting and Transportation Agreement between Buyer and CG&E, as assigned to and assumed by ULH&P, Buyer has retained ULH&P as its consultant for purposes of entering into purchases pursuant to this Agreement, exercising any of Buyer's options to purchase coal, scheduling deliveries under this Agreement, and generally administering day-to-day activities under this Agreement on behalf of Buyer. Seller shall be entitled to rely on purchases executed by ULH&P and instructions from ULH&P with respect to the exercise of Buyer's options pursuant to the Agreement, scheduling deliveries of coal, and other matters in connection with the day-to-day administration of this Agreement as being binding on Buyer.

THE PARTIES, BY THEIR AUTHORIZED AGENTS, HEREBY EXECUTE THIS COAL SUPPLY AGREEMENT WHICH SHALL BE EFFECTIVE ON THE DATE FIRST ABOVE WRITTEN.

TYRONE SYNFUELS, L.P.

BY: Charles H. [Signature]
President & CEO
TITLE: CG Inc. General Partner
DATE: 1-24-06

BY: _____
TITLE: _____
DATE: 1/17/06

**Schedule 1
Standard to Confirmation: Specifications**

ILB 12,100 Btu Product

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

<u>Specification</u>	<u>Guaranteed Quality Monthly Weighted Average</u>	<u>Shipment Rejection Limits (Per Barge)</u>
BTU/LB.	12,100	< 11,500 () < 11,000 () < 10,800 ()
MOISTURE	10.0%	
ASH	10.0%	> 13.0%
Lb.s SO ₂ /mmbtu	5.0	> 6.60
VOLATILE	35%	
Size (2" x 0"):		
-- Top size (inches)*	<2"	
-- Fines (% by wgt)		
Passing 1/4" screen	< 55%	
GRINDABILITY (HGI)	54	< 52

ASH FUSION TEMPERATURE (°F) (ASTM D1857)

REDUCING ATMOSPHERE

Initial Deformation	
Softening (H=W)	2050° min
Softening (H=1/2W)	
Fluid	

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

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

Table A
Tyrone Synfuels, LP
Embedded Escalation Deadband
2006 - 2007

<u>Escalation Date</u>	<u>EMBEDDED ESCALATION DEADBAND</u>	
	<u>Quarterly Increase</u>	<u>Cumulative Increase</u>
Jan 1 - 2006	\$	\$
Apr 1 - 2006	\$	\$
Jul 1 - 2006	\$	\$
Oct 1 - 2006	\$	\$
Jan 1 - 2007	\$	\$
Apr 1 - 2007	\$	\$
Jul 1 - 2007	\$	\$
Oct 1 - 2007	\$	\$

* Based on 2% deadband for a \$ and \$ price for 2006 and 2007, respectively

Exhibit A
Tyrone Synfuels, LP
Hypothetical Escalation Adjustment
Apr-06

Base Price	\$
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<u>Index Utilized</u>	<u>Index Weight</u>	<u>Year One Base Amount</u>	<u>Base⁽¹⁾ Index</u>	<u>Revised⁽²⁾ Index</u>	<u>Adjustment Amount</u>	<u>Adjusted Base Price</u>
CPI (W)	35%	\$				
PPI Industrial Commodities - Less Fuel & Pwr	20%	\$				
#2 Diesel Fuel	3%	\$				
Steel	12%	\$				
Prime Rate	15%	\$				
GDP - IPD	15%	\$				
Embedded Escalation Deadband ⁽³⁾					()	
					\$	⁽⁴⁾
50% of Adjusted Amount					\$	⁽⁵⁾
Total		\$			\$	\$

- ⁽¹⁾ Base indices as established per coal supply agreement.
- ⁽²⁾ Hypothetical Index for the date established in coal supply agreement.
- ⁽³⁾ Per Section 12 of coal supply agreement and Table A, Cumulative Increase.
- ⁽⁴⁾ The sum of the above adjustments or zero, which ever is greater.
- ⁽⁵⁾ 50% of Adjusted Amount - Adjustment shall be shared equally by both parties.

FOR ILLUSTRATION PURPOSES ONLY

Exhibit A
Tyrone Synfuels, LP
Hypothetical Escalation Adjustment
Jan-07

Base Price	\$
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<u>Index Utilized</u>	<u>Index Weight</u>	<u>Year One Base Amount</u>	<u>Base ⁽¹⁾ Index</u>	<u>Revised ⁽²⁾ Index</u>	<u>Adjustment Amount</u>	<u>Adjusted Base Price</u>
CPI (W)	35%	\$				
PPI Industrial Commodities - Less Fuel & Pwr	20%	\$				
#2 Diesel Fuel	3%	\$				
Steel	12%	\$				
Prime Rate	15%	\$				
GDP - IPD	15%	\$				
Embedded Escalation Deadband ⁽³⁾					<u>(0.942)</u>	
					\$ - ⁽⁴⁾	
50% of Adjusted Amount					\$ - ⁽⁵⁾	
Total		<u>\$</u>			\$ -	<u>\$</u>

- ⁽¹⁾ Base indices as established per coal supply agreement.
- ⁽²⁾ Hypothetical Index for the date established in coal supply agreement.
- ⁽³⁾ Per Section 12 of coal supply agreement and Table A, Cumulative Increase.
- ⁽⁴⁾ The sum of the above adjustments or zero, which ever is greater.
- ⁽⁵⁾ 50% of Adjusted Amount - Adjustment shall be shared equally by both parties

FOR ILLUSTRATION PURPOSES ONLY

Coal Seller:

Mailing Address:

Attn:

Tel.

Fax.

Ref #: 0104570

Coal Buyer:

The Union Light, Heat and Power Company

Mailing Address:

P.O. Box 960, EA606

Cincinnati, OH 45201-0960

Attn: Kim Lubrecht

Tel. 513 419 5302

Fax. 513 419 5840

Ref #: _____

Coal Supply Agreement

This Agreement, by and between _____, a Delaware limited partnership (hereinafter "Seller"), and The Union Light, Heat and Power Company, a Kentucky corporation (hereinafter "Buyer"), establishes the terms and conditions for the sale and purchase of Coal (The "Agreement"). Seller and Buyer can be individually referred to as a "Party" or collectively as "Parties."

- 1). **Product:** Crushed, bituminous coal containing no synthetic fuels, substantially free from any extraneous material and debris, with no intermediate sizes to be added or removed and otherwise meeting the Specifications of this Agreement (hereinafter "Coal").
- 2). **Effective Date:** January 23, 2006
- 3). **Contract Price:** \$ _____ per ton F.O.B. Delivery Point.

The Contract Price as determined in accordance with the provisions above shall be subject to adjustment to account for Government Impositions as follows:

The term "Governmental Imposition" as used in this Agreement means taxes or fees imposed directly or indirectly upon Seller by any government or governmental agency or additional cost arising from any new or change in any existing governmental law or regulation, including its

interpretation or enforcement, directly or indirectly affecting the mining, production, processing, or loading of Coal.

The Contract Price is intended and hereby deemed to include all costs incurred or to be incurred by Seller with respect to all applicable taxes, fees, and other costs related to any surface or underground mine regulatory statutes, administrative regulations and rulings, and local ordinances in effect and as enforced and construed as of March 1, 2005.

In the event that from and after March 1, 2005 any change in a federal or state statute, administrative regulation or ruling or local ordinance or amendment removes, increases or decreases any Governmental Imposition, Seller shall give Buyer notice thereof. After proper notice has been given and Buyer has conducted any review, an adjustment (up or down, as appropriate) shall be made to the applicable Contract Price for the full cost or savings associated with the enactment or repeal of such Governmental Imposition applicable to the Coal, to be made effective on the compliance date of the Governmental Imposition.

No Contract Price adjustment shall be made hereunder for changes in cost which result from the following: (i) any civil or criminal money fine or penalty imposed as the result of a failure by Seller to comply with any statute, administrative regulation or ruling, local ordinance, or judgment, order or decree of any court unless Buyer shall have specifically authorized in writing the incurring of such fine or penalty; or (ii) any change in the millage rate or valuation of property for purposes of assessing any existing *ad valorem* tax or unmined mineral tax.

Notwithstanding any of the foregoing, if the total adjustment to the applicable Contract Price for a Government Imposition under these provisions exceeds \$4.00 per ton and a Party objects in writing to adjusting the Contract Price by an amount in excess of \$4.00 per ton, then the objecting Party shall have the right to terminate this Agreement, by written notice, without penalty or obligation to pay damages with respect to either Party upon the expiration of no less than sixty (60) Days following such written notice to the other Party, except that Seller shall not have any such right to terminate this Agreement if the adjustment to the applicable Contract Price to account for the repeal or reduction of a Government Imposition is commensurate with the reduction of Seller's costs as a result of such repeal or reduction.

4). **Term:** January 23, 2006 through and including December 31, 2006, unless terminated earlier in accordance with the provisions herein.

5). **Quantity:** tons.

Seller and Tyrone Synfuel LP ("Tyrone") contemporaneously herewith are entering into that certain Coal Supply Agreement ("Tyrone Agreement"), dated as of even date. Quantity shall be ratable throughout the term of this Agreement. Tyrone and Seller may enter into purchase order(s) under the aforementioned Coal Supply Agreement pursuant to which Tyrone will purchase coal from Seller that would otherwise be purchased by Buyer pursuant to this Agreement ("Corresponding Tyrone Purchase Order"). Seller acknowledges and agrees that any Coal that Tyrone purchases pursuant to a Corresponding Tyrone Purchase Order shall be credited towards the satisfaction of Buyer's obligation to purchase Coal and Seller's obligation to deliver coal under this Agreement, to the same extent as if Buyer had purchased such Coal from Seller and Seller had delivered coal to Buyer under this Agreement. In no event shall Seller's obligation to deliver the quantity of Coal under the Tyrone Agreement and this Agreement exceed the annual Quantity set forth in this paragraph 5 above. The Corresponding Tyrone Purchase Order and Tyrone Agreement shall govern such transaction between Seller and Tyrone. Seller further acknowledges that Buyer shall have no

obligations under this Agreement or any purchase order with respect to any Coal that Tyrone purchases or agrees to purchase pursuant to the Tyrone Agreement or any Tyrone Purchase Order provided that, and notwithstanding the foregoing, in the event Tyrone fails to pay Seller for Coal sold to Tyrone pursuant to the Tyrone Agreement, Buyer shall be obligated to pay Seller for such Coal.

Buyer agrees that any Coal that Tyrone agrees to purchase pursuant to a Tyrone Purchase Order that corresponds to this Agreement that is shipped for delivery to Buyer's East Bend facility after the date on which the Synthetic Fuel and Coal Supply Agreement dated March 11, 2004 by and between The Cincinnati Gas & Electric Company and Tyrone Synfuel, L.P., as amended and assigned to Buyer has been terminated, shall be purchased by Buyer pursuant to this Agreement.

6). **Delivery Point:** F.O.B. barge Alicia Dock, M.P. 81.3 on the Monongahela River. Seller may designate another barge loading facility if approved by Buyer, which approval shall not be unreasonably withheld, provided that the total delivered costs in cents per million Btu of the Coal loading at any shipping point shall be no greater than Coal shipped FOB barge M.P. 81.3 on the Monongahela River. In the event Coal is shipped from such other shipping points, any savings from reduced transportation costs shall be shared equally by Seller and Buyer.

In the event that the Parties later agree on a mutual basis that Coal supplied under this Agreement may be subject to delivery by rail, the Parties at such time shall negotiate in good faith to mutually agree upon appropriate amendments to this Agreement and to the terms hereof to provide for and permit Coal to be loaded and transported in such manner, and in which case the Delivery Point shall be as so agreed and any references herein to a barge shall, to the extent applicable, be deemed to refer to a railcar.

Buyer shall be responsible for arranging and providing sufficient clean barges to facilitate the loading of Coal at the Delivery Point as scheduled under Section 9 hereof. Seller shall only load Coal into barges that are reasonably clean and free of debris and/or any other materials that might inhibit unloading or cause contamination of the Coal. Seller is entitled to reject any barges for loading that are not free of contaminants, impurities or materials of any kind (including left-over coal), in which case Buyer shall be required to promptly provide clean replacement barges. If coal cannot be loaded because Buyer has not provided clean replacement barges within fourteen (14) Days, Seller shall not be required to make up such deliveries except by mutual consent of the Parties on a mutually agreeable schedule.

7). **Specifications:** Coal quality specifications shall be as per attached Schedule 1.

Buyer may reject any Shipment falling outside of the Specifications' Shipment Rejection Limits, or Shipments that are substantially contaminated with foreign materials, with written notification to Seller. Buyer shall have twenty-four (24) hours from the time Buyer could have reasonably determined that a Shipment fails to conform to the Specifications to notify Seller of its intent to reject. A Shipment ("Shipment") is defined as one barge containing approximately 1,550 tons of Coal. Upon Buyer's rejection, title and all risk of loss of such Coal shall immediately revert back to Seller. Seller shall be responsible for promptly transporting the rejected Coal to an alternative destination determined by Seller and, if applicable, promptly unloading such coal and shall reimburse Buyer for all reasonable costs and expenses associated with the transportation, storage, handling and removal of the rejected Shipment. Seller shall make best efforts to replace the rejected Coal within sixty (60) Days. If Buyer accepts a Shipment of rejectable Coal, penalties will be assessed to the Shipment to compensate Buyer for the deficiencies. The penalties applicable to rejectable Coal will be handled in the same manner as set forth with respect to Quality Adjustment calculations.

Suspension of Shipments: If Seller's Coal fails to conform to the Specifications for two (2) consecutive months on a monthly weighted average basis, Seller and Buyer shall, at Buyer's sole discretion, meet to attempt in good faith to investigate the source of the problem and agree upon a resolution. If a resolution cannot be so identified and agreed upon within a reasonable amount of time not to exceed thirty (30) calendar Days, then Buyer reserves the right to discontinue receiving Shipments of Coal until Seller provides commercially reasonable evidence that the Shipments of Coal will consistently meet the Specifications. If the suspension of Shipments continues for longer than sixty (60) Days, such suspension of Shipments shall constitute an Event of Default in accordance with Section 19.

8). **Source:** Mine:
 Mine Operating Co.:
 Mine State:
 Mine County:
 BOM District:

Seller is prohibited from substituting any other coals for the Coal covered by this Agreement unless agreed to in writing by Buyer, which approval shall not be unreasonably withheld. Although Seller in no circumstance is obligated to do so, Seller may request permission in writing to substitute a different coal for the Coals covered by this Agreement. Seller's written request shall set forth in detail: (a) the reasons for the proposed substitution, (b) the time duration, shipments, or quantity covered by the proposed substitution, and (c) the quality parameters of the proposed substitute Coal. Buyer's failure to give written approval to Seller's request within thirty (30) calendar Days of the receipt of the request from Seller shall constitute a denial. Approval of any substitute coal may be subject to appropriate adjustments of the Contract Price and/or other terms and conditions which are acceptable to Buyer.

9). **Scheduling:** Buyer will advise Seller on or before the 15th day of each calendar month preceding scheduled shipments of the number of barges it desires to load during the succeeding calendar month to fulfill the Quantity and Buyer's desired loading dates and delivery schedule ("Delivery Schedule"). The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule. All deliveries hereunder and under the Tyrone agreement combined will occur in approximate amounts of tons per month.

It is understood that the purchase of this Coal hereunder is intended for the operation of Buyer's and Buyer's affiliates electric generating stations or any of Buyer's other controlled or operated stations (the "Stations"). Buyer shall have the right to resell Coal to affiliates, unless Coal is to be resold by such affiliate, without providing Seller an opportunity to purchase such Coal. In the event that Buyer desires to resell Coal for use other than in the Stations, prior to Buyer selling the Coal on the open market, Buyer shall notify Seller of such intention in writing, as well as the quantity of Coal, time period for shipment and market price. Buyer will then offer such Coal to Seller and Buyer and Seller will attempt to negotiate in good faith a price. If Buyer and Seller can not agree on a price within five (5) Business Days of the first notification from Buyer, Seller shall forfeit its option to purchase the Coal. However, Buyer shall not sell the Coal on the open market for a price less than the price Buyer offered to Seller without first giving Seller one (1) Business Day to accept such lower price, if Buyer still intends to resell the tonnage. In any event, if Buyer fails to resell any quantity of coal first offered to Seller, to a third party, within 30 Business Days, then Buyer is required to provide Seller with another opportunity to purchase such coal in accordance with the foregoing provisions. If Buyer does in fact resell Coal to a third

party, upon execution of a resale agreement, Buyer will provide Seller notice of the quantity, time period for shipment and destination. If Buyer sells any amount of Coal to a third party, such sale will not relieve Buyer of its obligations and duties under this Agreement, including the coordination and scheduling of Coal shipments for the third party which shall be Buyer's sole responsibility. Buyer may not declare force majeure under Section 14 with respect to any Coal it has resold to a third party.

10). **Sampling and Analysis:** Seller shall sample, via a mechanical sampler, and analyze Coal at its expense. Sampling shall be carried out following the American Society of Testing and Materials (ASTM) standard, as set forth in ASTM standard D2234 (Type I, condition A or B, systematic spacing). Analysis is to be done in accordance with applicable ASTM standards. Such analysis shall be final and binding and shall govern for payment.

Seller shall make available sample splits and a report of each sample's quality for Buyer upon request. Buyer, at its expense, may make arrangements to pick up samples. Seller shall retain, for a period of sixty (60) Days from the loading date, sample splits taken in accordance with the provisions of this Agreement for use by Seller and the independent laboratory specified below.

In the event of a disagreement over Coal analysis and upon Buyer and Seller selecting a mutually agreed upon independent laboratory, Seller shall provide sample splits to the independent laboratory for analysis. The cost of the independent analysis shall be equally shared between Buyer and Seller; however, the cost of the independent analysis shall be paid by Buyer if the results of such analysis and Seller's analysis are within applicable ASTM standards for repeatability and reproducibility, or in the absence of ASTM standards, mutually agreeable coal industry standards. If Seller's results are not so confirmed, then the independent laboratory's results shall be accepted as the quality and characteristics of the Coal.

11). **Quality Adjustments:** The Contract Price of Coal delivered under this Agreement shall be adjusted in accordance with the following:

(a) BTU Price Adjustment (\$/ton):

$$\\$/ton = [(Monthly Weighted Average Actual Btu/lb - 13,000 BTU/LB) / 13,000 BTU/LB] \times \text{Contract Price.}$$

Calculate the monthly weighted average Btu, "as received", utilizing individual Shipment tonnage to two (2) decimal places and the corresponding Shipment Btu, "as received", to the nearest whole Btu. The resulting monthly weighted average Btu, "as received", will be rounded to the nearest whole Btu.

(b) Ash Penalty Adjustment (\$/ton):

If the Monthly Weighted Average Actual Ash % exceeds 9.20 % (DRY BASIS), the Ash Penalty Adjustment shall be equal to:

$$\\$/ton = (\text{Monthly Weighted Average Actual Ash \%} - 9.20 \%) \times \$0.50$$

Calculate the monthly weighted average ash, dry basis, utilizing individual Shipment tonnage to two (2) decimal places and the corresponding actual Shipment ash, dry basis, to two (2) decimal places. The resulting monthly weighted average ash, dry basis, will be rounded to the nearest two (2) decimal places.

(c) Sulfur Adjustment (\$/ton):

(i) Premium or Penalty for Coal designated for delivery to a unit owned or operated by Buyer, or one of Buyer's or Buyer's affiliates that do not have an operational flue-gas desulfurization facility ("Non-Scrubber Coal") shall be calculated as follows:

SO₂ Adjustment for Non-Scrubber Coal: If the monthly weighted average actual lbs SO₂/mmbtu varies from the Typical Monthly Weighted Average Specification for Sulfur Dioxide (SO₂) lb./mmbtu for Non-Scrubber Coal shipped in any calendar month, the following SO₂ Premium/ Penalty Adjustment shall be applied:

$\$/\text{ton SO}_2 \text{ Adjustment shall equal} = ((\text{Typical Monthly Weighted Average Specification for Sulfur Dioxide (SO}_2\text{) lb /mmbtu} - \text{monthly weighted average actual lbs. SO}_2\text{/mmbtu}) \times (\text{monthly weighted average actual Btu/ lb.}) \times E) / 1,000,000.$

WHERE: E is defined for any given delivery month as the 3 day average SO₂ Price of allowances expressed in dollars per ton of SO₂ in the table entitled "AIR Daily Emission Allowance Indices" published in Energy Argus Air Daily, or its successor publication, for such calendar month of delivery as published on the 3rd, 4th and 5th Business Days of the subsequent month (e.g., spot price for allowances for January 2005 would be calculated using an average of the indices published in Energy Argus Air Daily on February 3, 4 and 7). In the event the market pricing published by Energy Argus Air Daily ceases to exist, an acceptable alternative source of market pricing shall be mutually agreed upon.

(ii) Penalty for Coal designated for delivery to a unit owned or operated by Buyer or one of Buyer's affiliates that has an operational flue-gas desulfurization facility ("Scrubber Coal") shall be calculated as follows:

SO₂ Penalty Adjustment for Scrubber Coal (\$/ton):

If the monthly weighted average actual lbs SO₂/mmbtu exceeds the Typical Monthly Weighted Average Specification for Sulfur Dioxide (SO₂) lb /mmbtu for Coal loaded by Seller in any calendar month, the SO₂ Adjustment for all Scrubber Coal shipped in any calendar month is equal to:

$\$/\text{ton} = (\text{Typical Monthly Weighted Average Specification for Sulfur Dioxide (SO}_2\text{) lb /mmbtu} - \text{monthly weighted average actual lbs. SO}_2\text{/mmbtu}) \times \text{monthly weighted average actual Btu/lb}) \times ((E \times .10) + \$85) / 1,000,000.$

WHERE: E is defined for any given delivery month as the 3 day average SO₂ Price of allowances expressed in dollars per ton of SO₂ in the table entitled "Daily Market Assessments, SO₂ Allowances, Price for current vintage year" published in Energy Argus Air Daily, or its successor publication, for such calendar month of delivery as published on the 3rd, 4th and 5th Business Days of the subsequent month (e.g., spot SO₂ price (E) for allowances for January 2005 coal shipments would be calculated by using an average of the indices published in Energy Argus Air Daily on February 3, 4, and 7).

(iii) For Coal that is resold to a third party under Section 9. Scheduling, Buyer shall have the sole right to determine whether such Coal is Scrubber Coal or Non-Scrubber Coal, and accordingly which sulfur adjustment calculation, either (i) or (ii), shall be applied to

the resale, and Buyer shall reflect the appropriate sulfur adjustment calculation in the final invoices issued in each month in accordance with Section 15.

For both the Scrubber and Non-scrubber adjustments, calculate the monthly weighted average sulfur, as received, utilizing individual Shipment tonnage to two (2) decimal places and the corresponding Shipment sulfur, "as received", to the nearest two (2) decimal places. The resulting monthly weighted average sulfur, as received, will be rounded to the nearest two (2) decimal places. Calculate the monthly weighted average SO₂/MMBtu by multiplying the monthly weighted average sulfur, "as received" (which has been rounded to the nearest two (2) decimal places), times 20,000 divided by the monthly weighted average Btu, as received (which has been rounded to the nearest whole Btu). The SO₂/MMBtu will be rounded to the nearest two (2) decimal places.

12). **Weight Determination:** The weight of each barge Shipment shall be determined by draft survey at barge loading as performed by an independent draft surveyor appointed by the Seller with the costs for Seller's account. If a certified belt scale system is installed at the Mine, or is available at any other approved barge loading facility, the weights from that system will be used. In the event weights are not determined at the point of loading, Buyer shall cause a barge draft survey to be completed prior to unloading of the Barges, and all costs associated therewith shall be for the account of Seller. Such weights shall be final and binding and shall govern for payment.

All references to "ton" or "tons" in this Agreement or any invoice issued pursuant to this Agreement shall mean a ton of 2,000 pounds, Avoirdupois.

13). **Loading Terms:** Seller agrees to load to the barge carrier's designated minimum tonnage specifications. If Seller fails to load the barges to meet the specifications, the difference between the specified minimum tonnage and the actual tonnage times the barge rate (\$/ton) to Buyer's destination will be billed to Seller. Seller agrees to ensure that Coal is available and that the loading dock has the capacity to load barges within seventy-two (72) hours of placement. Failure to load barges within seventy-two (72) hours may result in demurrage charges to the Seller.

General Terms and Conditions

14). **Force Majeure:** If either Party is rendered unable, wholly or in part, by reason of Force Majeure to carry out its obligations under this Agreement, and if that Party gives to the other Party written notice within ten (10) calendar Days of the Force Majeure, the obligations of the Party giving the notice, other than any obligation to make money payments, so far as they are affected by the Force Majeure, shall be excused during, but no longer than, the continuance of the Force Majeure; provided that the affected Party shall diligently take all commercially reasonable actions to remove as quickly as possible the Force Majeure or its effects, or as much thereof as possible.

For purposes of this Article, the term "Force Majeure" shall mean any event or condition (i) that is beyond the reasonable control of the Party affected, and (ii) that such Party is unable to prevent or provide against by the exercise of reasonable diligence. To the extent they satisfy the above definition, examples of such events or conditions include, but are not limited to: acts of God or of the public enemy; insurrection or riots; strikes or other differences with workmen; fire; storm;

flood; explosion; nuclear disaster; shortage of utility, facility, material or labor; embargo; breakdown of equipment; order of civil or military authority; compliance with or other action taken to carry out the intent or purpose of any law or regulation; shortage of barges or other interruption in transportation resulting from identifiable events and conditions of such nature and not due to general system-wide congestion; adverse geological conditions; and any other cause, whether of the kind specifically enumerated above or otherwise, which is not reasonably within the control of the Party invoking the Force Majeure provisions hereof.

The Party affected by the Force Majeure shall remedy the Force Majeure with all reasonable dispatch and will keep the other Party advised as to the continuance of the Force Majeure event; provided, however, that this provision shall not require Seller to deliver, or Buyer to receive, the Coal at points other than the Delivery Point for the authorized Source including allowable substitutions under the Agreement. The requirement that any Force Majeure shall be remedied diligently with the use of all commercially reasonable actions shall not require the settlement of strikes, lockouts, or other labor difficulty by the Party involved, contrary to its wishes. The handling of all such difficulties shall be entirely within the discretion of the Party concerned.

A change in market conditions including the ability of Seller to sell Coal at a higher price, or Buyer or Buyer's customer to buy Coal at a lower price, whether or not foreseeable shall not be considered Force Majeure.

During any period of Force Majeure, to the extent the Seller is unable to deliver Coal to the Buyer, the Buyer may purchase replacement coal from others, and to the extent the Buyer is unable to purchase Coal from the Seller, the Seller may deliver and sell to others the Coal that was otherwise intended for the Buyer.

A complete or partial Force Majeure event that persists for a duration greater than twenty (20) Days shall only be made up upon mutual consent of the Parties. Any deficiencies in deliveries due to Force Majeure events of a duration of twenty (20) Days or less shall, at the sole discretion of the Party not claiming Force Majeure, be made up within the next sixty (60) Days.

If an event of complete or partial Force Majeure persists for a continuous period of six (6) months, then the Party not claiming Force Majeure shall have the option, upon three (3) Days' prior written notice, to terminate the Agreement and the associated obligations of the Parties thereunder (other than payment obligations for prior performance thereunder).

If Seller claims Force Majeure and is unable to meet all of its sales obligations under this Agreement and any other of its coal sales agreements involving coal of a similar type and quality as the Coal, or if Buyer claims Force Majeure and is unable to meet all of its purchase obligations under this Agreement and any other of its or its affiliates' coal purchase agreements involving coal of a similar type and quality as the Coal, then any reductions in Seller's deliveries or Buyer's or its affiliates' purchases (as applicable) shall be allocated in a fair and reasonable manner among the affected transaction(s) and such other coal supply or purchase agreements involving coal of the same type and quality as the Coal, to the extent contractually permitted by such Agreements.

The Parties' respective obligations under this Agreement are subject to Buyer's ability to operate the Station(s) receiving the Coal supplied hereunder and Seller's ability to operate the mining complex producing the Coal supplied hereunder under existing permits, to maintain such permits and to obtain new permits as required, and to the condition that

governmental, regulatory, and court actions will neither hinder nor preclude the respective ability of each Party to operate the pertinent facilities as planned, such that the substantial inability of either Party to do so shall excuse performance of its obligations under this Agreement to the extent such performance is prevented thereby, provided however that such inability to so operate its facilities for solely economic reasons shall not so excuse a Party's performance of its obligations under this Agreement.

15). **Payment:** The Buyer will self-invoice bi-monthly. Shipments loaded at the Delivery Point during the first through the fifteenth of each month are payable ten (10) Days after the end of the month at the Contract Price. Shipments loaded during the sixteenth through the end of each month are payable, with quality adjustments for all Shipments loaded during the month, twenty-five (25) Days after the end of each month. Buyer shall separately self-invoice for Coal designated as Scrubber Coal, to which the SO₂ Penalty Adjustment for Scrubber Coal shall apply, and Coal designated as Non-Scrubber Coal, to which the SO₂ Premium/Penalty Adjustment for Non-Scrubber Coal shall apply, and on the final invoices for each month shall identify the tons to which the applicable adjustment applies. Each invoice shall include the necessary information for Seller to match Shipments for each invoice and otherwise to verify the amount being invoiced. Buyer shall pay, by electronic transfer in immediately available United States funds to the address below:

Buyer Billing Contact:

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

Seller Billing Contact:

Attn:
Email:

Seller's Payment Address:

Bank Name:

Account Number:

ABA number:

Account Name:

Ref

If the Parties are required to pay any amount on the same day or in the same month, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount may pay to the other Party the difference between the amounts owed.

If Buyer does not make payment for Coal shipped in accordance with the terms set forth above, Seller has the right to invoice Buyer interest, equal to the prime lending rate as published in The Wall Street Journal on the first Monday after such funds become overdue plus two percent (2%) (the "Interest Rate"), on the outstanding balance, which shall be payable within ten (10) calendar Days of receipt of the invoice by Buyer.

16). **Billing Dispute:** If Seller, in good faith, disputes an invoice, Seller shall no later than the time of payment of the invoice notify Buyer of the basis for the dispute. However, Buyer is obligated to pay any undisputed amount when due. If any amount withheld under dispute by Buyer is ultimately determined to be due to Seller, it shall be paid within one (1) Business Day after such determination, along with interest accrued at the Interest Rate from the original due date until the date paid. Inadvertent overpayments shall either be returned by Seller, or deducted by Buyer from subsequent invoice or invoices, as the case may be.

17). **Remedies for Failure to Deliver or Receive:** The remedies set forth in this Section 17 shall be the non-defaulting Party's non-exclusive monetary remedies for the defaulting Party's failure to deliver or receive Coal, as applicable, prior to the non-defaulting Party's termination of the Agreement due to an Event of Default pursuant to Section 19:

- (a) As an alternative to the damages provision below, if the Parties mutually agree in writing, the non-defaulting Party may schedule deliveries or receipts, as the case may be, pursuant to such terms as the Parties agree in order to discharge some or all of the obligations to pay damages. In the absence of such agreement, the damages provision of this Section 17 shall apply.
- (b) Unless excused by Force Majeure or Buyer's failure to perform, and in the event that Seller delivers 80% or more of the Quantity of Coal to be delivered in any calendar month during the Term of this Agreement pursuant to the Delivery Schedule, for barge deliveries, then Seller shall have thirty (30) Days to makeup the shortfall of tons of Coal Seller failed to deliver in given month ("Make-Up Tons") without penalty to Seller. Any shipments in any month shall be deemed to be Make-Up Tons until all deficiencies from any previous months, if applicable, are satisfied. Unless excused by Force Majeure, or Buyer's failure to perform, if Seller delivers less than (i) 80% of the Quantity of Coal to be delivered hereunder pursuant to the Delivery Schedule plus (ii) the cumulative Make Up Tons then, Buyer and Seller shall enter into "good faith" negotiations to determine a mutually agreeable make-up schedule. If after fifteen (15) Days, a mutually agreeable make up schedule has failed to be agreed upon, then Seller shall pay to the Buyer for each ton of the entire deficiency an amount equal to the positive difference, if any, incurred by Buyer as a result of taking delivery of substitute coal at a location other than the Delivery Point between the replacement price paid less the then current Contract Price or, absent such a purchase, the Market Price for such Quantity of Coal FOB the Delivery Point, as determined by Buyer in a commercially reasonable manner and consistent with the definition of "Market Price" as set forth below, less the then current Contract Price. It is expressly agreed that Buyer shall not be required to enter into a replacement transaction in order to determine the Market Price. For the purposes of this paragraph, any Quantity of Coal delivered in any calendar month that has been rejected by Buyer in accordance with Section 10 hereof shall not be considered to have been shipped.
- (c) Unless excused by Force Majeure or Seller's failure to perform, if Buyer fails to accept at least 80% of the Quantity of Coal to be received in any calendar month during the Term of this Agreement pursuant to the Delivery Schedule for barge deliveries, then Buyer shall have thirty (30) Days to make up the shortfall of tons of Coal Buyer failed to accept delivery in a given month ("Make-Up Tons") without penalty to Buyer. Any shipments in any month shall be deemed to be

Make-Up Tons until all deficiencies from any previous months, if applicable, are satisfied. If Buyer accepts less than (i) 80% of the Quantity of Coal to be received hereunder pursuant to the Delivery Schedule plus (ii) the cumulative Make-Up Tons then, Seller and Buyer shall enter into "good faith" negotiations to determine a mutually agreeable make-up schedule. If after fifteen (15) Days, a mutually agreeable make up schedule has failed to be agreed upon then, Buyer shall pay to the Seller for each ton of the entire deficiency an amount equal to the positive difference, if any, obtained by subtracting the Market Sales Price from the then current Contract Price for the deficiency. For the purposes of this paragraph, any quantity of Coal delivered in any calendar month that has been rejected by Buyer in accordance with Section 10 hereof shall not be considered to have been shipped.

- (d) Both Parties shall be subject to a commercially reasonable good faith obligation to mitigate any damages hereunder. Further, the non-defaulting party shall provide timely notice of any deficiency and the calculated damages to the defaulting party.
- (e) Payment of amounts, if any, determined under paragraph (b) or (c) of this Section 17 shall be made within fifteen (15) calendar Days of receipt of notice by the defaulting party. All such determinations shall be made in a commercially reasonable manner.
- (f) If a Party obligated to make a payment under this Section 17 timely makes such payment to the other Party, no failure to perform as described in this Section 17 shall constitute an Event of Default pursuant to Section 19.
- (g) Any good faith dispute between the Parties arising under Section 17 shall be subject to resolution under Section 32.

18). **Performance Assurance:** At any time during the term of this Agreement, either Party ("Party X" or the "Exposed Party") may require the other Party ("Party Y" or the "Non-Exposed Party") to provide information reasonably required to ascertain Party Y's ability to meet its material obligations pursuant to this Agreement, including as applicable and without limitation the obligation to receive, transport and pay for coal, the obligation to produce and tender coal for delivery and the obligation to pay damages in the event Party Y fails to perform its obligations hereunder. If Party X has reasonable grounds to believe that Party Y's ability to perform has become unsatisfactory, Party X may provide Party Y with written notice requesting Performance Assurance from Party Y in a commercially reasonable manner; *provided, however*, that a request for Performance Assurance shall not be made solely on the basis of coal market conditions or any change thereto relative to the Contract Price or any purported difference between the Contract Price and the Market Price for Coal. Upon receipt of such notice, Party Y shall have five (5) Business Days to provide such Performance Assurance to Party X. Failure by Party Y to provide such Performance Assurance within such time shall be deemed an Event of Default hereunder.

For purposes of this Section 18, "Performance Assurance" means collateral in the form of cash, Letter(s) of Credit, other commercially reasonable forms of security or performance assurance satisfactory to the Party requesting such Performance Assurance, or verifiable evidence of a Party's ability to produce and tender Coal for delivery (in the case of Seller) or to accept delivery of and pay for Coal (in the case of Buyer) in accordance with the terms of this Coal Supply

Agreement where such verifiable evidence is reasonably satisfactory to the Party requesting such Performance Assurance.

Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:

(i) Unless otherwise agreed to in writing by the parties, each Letter of Credit shall be maintained for the benefit of the Exposed Party. The Non-Exposed Party shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or other Performance Assurance, in each case at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank issuing a Letter of Credit shall fail to honor the Exposed Party's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of the Exposed Party either a substitute Letter of Credit that is issued by a bank acceptable to the Exposed Party or other Performance Assurance, in each case within five (5) Business Days after such refusal.

(ii) As one method of providing Performance Assurance, the Non-Exposed Party may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.

(iii) Upon the occurrence of a Letter of Credit Default, as defined below, the Non-Exposed Party agrees to provide to the Exposed Party either a substitute Letter of Credit or other Performance Assurance, in each case on or before the fifth (5th) Business Day after the occurrence thereof.

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

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

(vi) "Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events: (a) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (i) "A-" by S&P or "A3" by Moody's, if such issuer is rated by both S&P and Moody's, (ii) "A-" by S&P, if such issuer is rated only by S&P, or (iii) "A3" by Moody's, if such issuer is rated only by Moody's; (b) the issuer of the Letter of Credit shall fail to

comply with or perform its obligations under such Letter of Credit; (c) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (d) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of the Agreement, in any such case without replacement; or (e) the issuer of such Letter of Credit shall become Bankrupt; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

19). **Event of Default:** An event of default and breach of the Agreement with respect to either Party ("Event of Default") shall include any of the following:

- (a) the failure of either Party to make when due any payment required hereunder if such failure is not remedied within five (5) Business Days after notice of such failure is given to the defaulting Party by the non-defaulting Party;
- (b) subject to the other provisions of this Agreement, the failure of either Party to comply with any or all of its other respective obligations in good faith as herein set forth, including without limitation Seller's failure to tender coal for delivery as scheduled and Buyer's failure to accept coal at the Delivery Point as scheduled, and such noncompliance is not cured within ten (10) Business Days after notice thereof to the defaulting Party;
- (c) failure to provide Performance Assurance in accordance with Section 18;
- (d) either Party or either Party's guarantor (i) filing a petition in bankruptcy, (ii) having such a petition filed against it, (iii) becoming otherwise insolvent or unable to pay its debts as they become due;
- (e) the failure of a Party's guarantor, if any, to perform any covenant set forth in its guaranty, or such guaranty shall expire or be terminated or shall cease to guarantee the obligations of such party as set forth in the guarantee, or such guarantor shall become subject to any of the events specified in (d), (i), (ii) or (iii) above.

An Event of Default shall be considered to substantially impair the value of this Agreement and shall be treated as a breach of the whole within the meaning of Uniform Commercial Code Section 2-612.

20). **Buyer's Damages for Breach:** The measure of damages for breach or an Event of Default by the Seller is (a) the positive difference, if any, resulting from subtracting the Contract Price from the Market Price at the time the Buyer learned of the breach, times (b) the undelivered Quantity, less (c) expenses saved in consequence of the Seller's breach.

21). **Seller's Damages for Breach:** The measure of damages for breach or an Event of Default by the Buyer is (a) the positive difference, if any, resulting from subtracting the Market Sales Price from the Contract Price at the time the Seller learned of the breach, times (b) the undelivered Quantity, less (c) expenses saved in consequence of the Buyer's breach.

22). **Rights and Remedies; Limitation of Liability:** The rights and remedies granted under this Agreement shall not be exclusive but shall be in addition to all other rights and remedies

available at law or in equity. PROVIDED, HOWEVER, THAT NEITHER SELLER NOR BUYER SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OR BUSINESS INTERRUPTION DAMAGES, WHETHER BY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

23). **Insurance:** Seller shall maintain, or cause to be procured and maintained, Statutory Longshore and Harbor Workers' Compensation Act Insurance or Statutory State Workers' Compensation Insurance or Jones Act (Maritime Employers Liability), whichever is applicable, covering Seller's responsibilities with respect to all workers at the docks and fleets at the Delivery Point, and Comprehensive Marine Liability insurance (in any combination of primary and excess coverage), including but not limited to Protection and Indemnity Liability, Full Collision Liability, Marine Operators Liability, Marine Contractual Liability, Wharfinger Liability, Hull and Cargo Legal Liability and Cost of Removal of Wreck and Cargo (including voluntary or statutory), where applicable. Buyer understands and agrees that Seller has, or may create and/or maintain, a high deductible commercial General liability and other liability insurance programs in a form and amount usual, customary and commercially reasonable for companies of similar size and complexity. Buyer further understands and agrees that Seller is an approved self-insurer for worker's compensation but that Seller purchases excess workers' compensation insurance. Seller at all times shall take such action as necessary to be in and remain in compliance with the statutes of any state regulating worker's compensation self-insurance.

Buyer shall comply with all workers' compensation laws covering Buyer's responsibilities with respect to all of its employees, and maintain Marine Liability insurance (in any combination of primary and excess coverage), including but not limited to Hull and Machinery, Protection & Indemnity (as respects to Cinery Corp. owned vessels), Marine Contractual Liability, Wharfinger Liability, removal of wreck, both voluntary and statutory and Cargo.

24). **Title/ Risk of Loss:** Seller warrants good title to all Coal delivered hereunder, free and clear of all claims and encumbrance. Title and risk of loss shall pass to the Buyer as the Coal is loaded into each barge at the Delivery Point.

25). **Assignment:** Neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. If Buyer or Seller consents to any assignment, such consent shall not relieve the other Party of or from any of the obligations or duties under this Agreement, and such consent shall be subject, as the case may be, to Seller's or Buyer's compliance with all such respective duties and obligations and to Buyer's or Seller's respective rights under this Agreement. Any assignee shall be considered the agent, as the case may be, of Seller or Buyer.

All requests for consent, together with a copy of the proposed instrument of assignment, shall be in writing and submitted to Buyer or Seller, as the case may be, not less than thirty (30) Days in advance of the effective date of such proposed assignment.

26). **Entire Agreement:** This Agreement is the final and entire agreement between the Parties. No modification or amendment of this Agreement shall be effective or binding unless set forth in writing signed by both Parties. No purchase order form issued by Buyer under this Agreement or otherwise shall become a part of this Agreement and binding upon Seller unless made in writing and signed by Seller. Notwithstanding the preceding sentence, from time to time Buyer may issue purchase orders to Seller with respect to the subject matter of this Agreement for

Buyer's internal administrative purposes, provided such purchase orders shall not be construed as part of this Agreement.

27). **Waiver:** Any failure by Buyer or Seller at any time, or from time to time, to enforce or require the strict keeping and performance by the other Party of any of the terms or conditions of this Agreement shall not constitute a waiver by Buyer or Seller of any such terms or conditions, and shall not affect or impair such terms or conditions in any way or the right of Buyer or Seller at any time to avail itself of such remedies as it may have for any such breach or breaches of such terms or conditions. In order for a waiver by Buyer or Seller of any term, condition, covenant or agreement of the Agreement to be effective and binding against Buyer or Seller, such waiver must be set forth in a writing that describes such waiver in detail and that is signed by an authorized officer of, as the case may be, Buyer or Seller. Verbal or other instructions, orders or directives by Buyer's or Seller's personnel or any course of performance or course of dealing is not and shall not be deemed to be a waiver by Buyer or by Seller unless in writing satisfying the requirements of the previous sentence is executed by an authorized officer of that Party. In any event, such properly-issued written waivers shall be effective only as to the specific event or circumstance described in the written waiver form and no such waiver shall be deemed to be a continuing waiver or a waiver with respect to future events or circumstances, even if the facts surrounding such future events and circumstances are similar or identical to those involved in the properly-issued written waiver.

28). **Governing Law:** This Agreement shall be construed in accordance with and governed by the laws of the State of New York, including without limitation the Uniform Commercial Code, without giving effect to the doctrine of conflict of laws.

29). **Confidentiality:** Each Party hereby acknowledges that this Agreement contains confidential information that may place such a Party at a competitive disadvantage if disclosed to the public. Therefore, the terms of this Agreement shall be preserved as confidential by the Parties, except:

- (a) to the extent necessary for the disclosing Party to comply with any applicable laws, rules, regulations, statutes or ordinances or otherwise as necessary to the conduct of its business affairs, including necessary disclosures to outside professionals such as accountants and auditors, engineering and testing personnel, and legal counsel;
- (b) by commission of a valid subpoena and/or order of a court of competent jurisdiction, provided, however, the disclosing Party shall provide the other Party with prompt notice of such request so that it may seek an appropriate protective order and/or waive the disclosing Party's compliance with this provision (if in the absence of a protective or receipt of a waiver hereunder, the disclosing Party is nonetheless, in the opinion of its counsel, compelled to disclose the terms of this Agreement to any tribunal or else stand liable for contempt or suffer other censure or penalty, the disclosing Party may disclose such information to such tribunal without liability hereunder); or
- (c) to a subsidiary, parent or affiliated corporation of Buyer or Seller.

30). **Notices:** All communications, notices, certificates and the like issued under this Agreement which are required to be transmitted shall be considered delivered when sent via

Certified Mail (Return Receipt Required), a recognized commercial common carrier (with acknowledgment of receipt required), facsimile, electronic transmission, or personal delivery directly as follows:

If to Buyer then to:

The Union Light Heat and Power Company
P. O. Box 960
Cincinnati, OH 45201-0960
Attention: VP, Commercial Fuels
Fax: 513-419-5690

If to Seller then to:

Fax:
Attn.:

with a courtesy copy faxed to:
1753.

A Party's change in the notice information set forth above, such as due to an address or name change, shall be provided to the other Party in writing in accordance with the above notice requirements.

31). **Limitation on Warranty:** Except as expressly set forth herein, Seller expressly disclaims any other representations or warranties, written or oral, express or implied, including merchantability, or fitness for any particular purpose.

32). **Dispute Resolution:**

A. Procedure. If a dispute arises between the Parties relating to this Agreement, the Parties agree to use the following procedure prior to either Party pursuing other available remedies:

- (i) A meeting shall be held promptly between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.
- (ii) If within thirty (30) Days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, the dispute shall be submitted to binding arbitration pursuant to subsection B below.

B. Arbitration. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association ("AAA"), except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any

such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes of maintaining the status quo until such time as the arbitration award is rendered or the dispute is otherwise resolved. The arbitration shall be conducted in Pittsburgh, Pennsylvania and the laws of New York shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) calendar Days of service of a demand for arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by Buyer and one shall be selected by Seller. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the Parties. If the arbitrators appointed by the Parties cannot agree upon the third arbitrator within ten (10) calendar Days, then either Party may apply to the AAA for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) calendar Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by such Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Section. Both Parties agree that during the pendency of any dispute between the Parties, including without limitation any dispute regarding an alleged Event of Default or any purported termination or cancellation of the Agreement, Seller will continue to tender for delivery and sell Coal and Buyer will continue to accept delivery of and pay for Coal without interruption.

33). **Representations and Warranties:** On the Effective Date hereof, each Party represents and warrants to the other that:

- (a) The execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate or other organizational action on its part and do not violate or conflict with any law applicable to it, its organizational documents or any order or judgment of a court or other agency of government applicable to it or its assets;
- (b) Its obligations under this Agreement are legally valid and binding obligations, enforceable in accordance with their terms;
- (c) It has, or its affiliates have, or will diligently pursue, any and all necessary governmental and other third party permits, approvals and licenses required in connection with the execution, delivery and performance of this Agreement;

- (d) There are no Bankruptcy Proceedings, as defined herein, pending or being contemplated by it or, to its knowledge, threatened against it;
- (e) There are no known suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority that materially affect and adversely affect its ability to perform its obligations under this Agreement; and
- (f) With respect to this Agreement, it, or one or more of its affiliates, is a producer, processor, commercial user or merchant handling Coal, and it is entering into such Agreement for purposes related to its business as such.

34). *[Intentionally omitted.]*

35). **Other Definitions:**

- (a) **"Business Day"** means any day on which the Federal Reserve member banks in New York City are open for business. A Business Day shall run from 8:00 a.m. to 5:00 p.m. Eastern Prevailing Time.
- (b) **"Day"** means a calendar day.
- (c) **"Letter of Credit"** means one or more irrevocable, transferable standby letters of credit from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's.
- (d) **"Market Price"**, for all purposes of this Agreement, means and shall be determined with reference to all appropriate data, including but not limited to coal prices agreed to by parties in arm's-length transactions under other coal supply agreements similar in nature to this Agreement with respect to quantity and duration, applicable to coal shipments to be made during the period(s) when Coal to be supplied hereunder is not delivered or accepted, as the case may be, and may include but shall not be based exclusively on monthly OTC price data or other such measures of the market which reflect pricing for a single trainload or barge of coal.
- (e) **"Market Sales Price"** means the price at which Seller, acting in a commercially reasonable manner, resells (if at all) the deficiency (plus additional transportation charges, if any, incurred by Seller as a result of delivering Coal to a location other than the Delivery Point) or, absent such resale, the Market Price for such Quantity of Coal FOB the Delivery Point, as determined by Seller in a commercially reasonable manner. It is expressly agreed that Seller shall not be required to enter into a replacement transaction in order to determine the Market Sales Price.

THE PARTIES, BY THEIR AUTHORIZED AGENTS, HEREBY EXECUTE THIS COAL SUPPLY AGREEMENT WHICH SHALL BE EFFECTIVE ON THE EFFECTIVE DATE AS DEFINED ABOVE

THE UNION LIGHT, HEAT AND POWER
COMPANY (BUYER)

(SELLER)

BY: _____

BY: VE Alton

BY: _____

TITLE: Vice President

TITLE: _____

DATE: 1/24/06

DATE: Jan. 26. 2006

Schedule 1
Standard to Confirmation: Specifications

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

<u>Specification</u>	<u>Typical Monthly Weighted Average</u>	<u>Shipment Rejection Limits (Barge / Unit Train)</u>
BTU/LB.	13,000	< 12,200
MOISTURE	8.50%	na
ASH (dry basis)	9.20%	> 10.80%
SULFUR DIOXIDE (SO ₂)	4.50 lb./MMBTU	> 5.00 lb./MMBTU
VOLATILE	34%	na
Size (2" x 0"):		
-- Top size (inches)	< 2"	
-- Fines (% by wgt)		
Passing 1/4" screen		> 60%
GRINDABILITY (HGI)	52	< 47
<u>ASH FUSION TEMPERATURE (°F) (ASTM D1857)</u>		
<u>REDUCING ATMOSPHERE</u>		
Softening (H=W)	2,200 °F	na

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

Coal Seller:

Mailing Address:

Attn:

Tel.

Fax.

Ref #:

Coal Buyer:

Tyrone Synfuels, L.P.

Mailing Address:

160 Quality Center Road

Homer City, PA 15748

Attn: Clark Harrison

Tel. 724 479 6016

Fax. 724 479 4181

Ref #: _____

Coal Supply Agreement

This Agreement, by and between _____ a Delaware limited partnership (hereinafter "Seller"), and Tyrone Synfuels, L.P., a Delaware limited partnership (hereinafter "Buyer"), establishes the terms and conditions for the sale and purchase of Coal (hereinafter the "Agreement"). Seller and Buyer can be individually referred to as a "Party" or collectively as "Parties."

- 1). **Product:** Crushed, bituminous coal containing no synthetic fuels, substantially free from any extraneous material and debris, with no intermediate sizes to be added or removed and otherwise meeting the Specifications of this Agreement (hereinafter "Coal").
- 2). **Effective Date:** January 23, 2006
- 3). **Contract Price:** \$ _____ per ton F.O.B. Delivery Point.

The Contract Price as determined in accordance with the provisions above shall be subject to adjustment to account for Governmental Impositions as follows:

The term "Governmental Imposition" as used in this Agreement means taxes or fees imposed directly or indirectly upon Seller by any government or governmental agency or additional cost arising from any new or change in any existing governmental law or regulation, including its

interpretation or enforcement, directly or indirectly affecting the mining, production, processing, or loading of Coal.

The Contract Price is intended and hereby deemed to include all costs incurred or to be incurred by Seller with respect to all applicable taxes, fees, and other costs related to any surface or underground mine regulatory statutes, administrative regulations and rulings, and local ordinances in effect and as enforced and construed as of March 1, 2005.

In the event that from and after March 1, 2005 any change in a federal or state statute, administrative regulation or ruling or local ordinance or amendment removes, increases or decreases any Governmental Imposition, Seller shall give Buyer notice thereof. After proper notice has been given and Buyer has conducted any review, an adjustment (up or down, as appropriate) shall be made to the applicable Contract Price for the full cost or savings associated with the enactment or repeal of such Governmental Imposition applicable to the Coal, to be made effective on the compliance date of the Governmental Imposition.

No Contract Price adjustment shall be made hereunder for changes in cost which result from the following: (i) any civil or criminal money fine or penalty imposed as the result of a failure by Seller to comply with any statute, administrative regulation or ruling, local ordinance, or judgment, order or decree of any court unless Buyer shall have specifically authorized in writing the incurring of such fine or penalty; or (ii) any change in the millage rate or valuation of property for purposes of assessing any existing *ad valorem* tax or unmined mineral tax.

Notwithstanding any of the foregoing, if the total adjustment to the applicable Contract Price for a Government Imposition under these provisions exceeds \$4.00 per ton and a Party objects in writing to adjusting the Contract Price by an amount in excess of \$4.00 per ton, then the objecting Party shall have the right to terminate this Agreement, by written notice, without penalty or obligation to pay damages with respect to either Party upon the expiration of no less than sixty (60) Days following such written notice to the other Party, except that Seller shall not have any such right to terminate this Agreement if the adjustment to the applicable Contract Price to account for the repeal or reduction of a Government Imposition is commensurate with the reduction of Seller's costs as a result of such repeal or reduction.

4). **Term:** The effective date of this Agreement is January 23, 2006 and it shall remain in effect until the date that is the earlier of (i) thirty (30) days after the date on which either Party gives written notice to the other Party of its election to terminate this Agreement, (ii) December 31, 2006, or (iii) the date on which the Synthetic Fuel and Coal Supply Agreement between The Cincinnati Gas & Electric Company ("CG&E"), as assigned to and assumed by The Union Light, Heat and Power Company ("ULH&P"), and Buyer dated March 11, 2004 (the "Synfuel Agreement") terminates (the "Synfuel Termination Date"). Following any termination pursuant to clause (i) and (ii) above, this Agreement and any relevant purchase order shall remain in effect with respect to any purchase entered into on or prior to the termination date until each Party has fulfilled all of its obligations with respect to all such purchases, or, if earlier, the Synfuel Termination Date. All purchases entered into prior to the Synfuel Termination Date shall terminate on the Synfuel Termination Date. No deliveries of Coal shall be made to Buyer following the Synfuel Termination Date. No termination of this Agreement shall affect or excuse the performance of any Party under any provision of this Agreement that by its terms survives any such termination, including, without limitation, Buyer's obligation to pay for Coal delivered on or before the termination date.

5). **Quantity:** Buyer has the option to purchase up to _____ tons during the Term of the Agreement. Buyer's election to purchase Coal hereunder shall be exercised pursuant to one or more purchase orders issued by Buyer to Seller for the purpose of nominating tonnage. A purchase order issued hereunder shall state only quantity and shall be issued for the sole purpose of providing notice to Seller of Buyer's election(s) to exercise its option hereunder. Any and all other terms and conditions in the purchase order, including any pre-printed standard terms and conditions, shall be of no force and effect. As between Buyer and Seller, this Agreement shall be the sole governing instrument for purposes of stating the terms and conditions for any transactions hereunder.

6). **Delivery Point:** F.O.B. barge Alicia Dock, M.P. 81.3 on the Monongahela River. Seller may designate another barge loading facility if approved by Buyer, which approval shall not be unreasonably withheld, provided that the total delivered costs in cents per million Btu of the Coal loading at any shipping point shall be no greater than Coal shipped FOB barge M.P. 81.3 on the Monongahela River. In the event Coal is shipped from such other shipping points, any savings from reduced transportation costs shall be shared equally by Seller and Buyer.

In the event that the Parties later agree on a mutual basis that Coal supplied under this Agreement may be subject to delivery by rail, the Parties at such time shall negotiate in good faith to mutually agree upon appropriate amendments to this Agreement and to the terms hereof to provide for and permit Coal to be loaded and transported in such manner, and in which case the Delivery Point shall be as so agreed and any references herein to a barge shall, to the extent applicable, be deemed to refer to a railcar.

Buyer shall be responsible for arranging and providing sufficient clean barges to facilitate the loading of Coal at the Delivery Point as scheduled under Section 9 hereof. Seller shall only load Coal into barges that are reasonably clean and free of debris and/or any other materials that might inhibit unloading or cause contamination of the Coal. Seller is entitled to reject any barges for loading that are not free of contaminants, impurities or materials of any kind (including left-over coal), in which case Buyer shall be required to promptly provide clean replacement barges. If coal cannot be loaded because Buyer has not provided clean replacement barges within fourteen (14) Days, Seller shall not be required to make up such deliveries except by mutual consent of the Parties on a mutually agreeable schedule.

7). **Specifications:** Coal quality specifications shall be as per attached Schedule 1.

Buyer may reject any Shipment falling outside of the Specifications' Shipment Rejection Limits, or Shipments that are substantially contaminated with foreign materials, with written notification to Seller. Buyer shall have twenty-four (24) hours from the time Buyer could have reasonably determined that a Shipment fails to conform to the Specifications to notify Seller of its intent to reject. A Shipment ("Shipment") is defined as one barge containing approximately 1,550 tons of Coal. Upon Buyer's rejection, title and all risk of loss of such Coal shall immediately revert back to Seller. Seller shall be responsible for promptly transporting the rejected Coal to an alternative destination determined by Seller and, if applicable, promptly unloading such coal and shall reimburse Buyer for all reasonable costs and expenses associated with the transportation, storage, handling and removal of the rejected Shipment. Seller shall make best efforts to replace the rejected Coal within sixty (60) Days. If Buyer accepts a Shipment of rejectable Coal, penalties will be assessed to the Shipment to compensate Buyer for the deficiencies. The penalties applicable to rejectable Coal will be handled in the same manner as set forth with respect to Quality Adjustment calculations.

Suspension of Shipments: If Seller's Coal fails to conform to the Specifications for two (2) consecutive months on a monthly weighted average basis, Seller and Buyer shall, at Buyer's sole discretion, meet to attempt in good faith to investigate the source of the problem and agree upon a resolution. If a resolution cannot be so identified and agreed upon within a reasonable amount of time not to exceed thirty (30) calendar Days, then Buyer reserves the right to discontinue receiving Shipments of Coal until Seller provides commercially reasonable evidence that the Shipments of Coal will consistently meet the Specifications. If the suspension of Shipments continues for longer than sixty (60) Days, such suspension of Shipments shall constitute an Event of Default in accordance with Section 19.

8). Source: Mine:
 Mine Operating Co.:
 Mine State:
 Mine County:
 BOM District:

Seller is prohibited from substituting any other coals for the Coal covered by this Agreement unless agreed to in writing by Buyer, which approval shall not be unreasonably withheld. Although Seller in no circumstance is obligated to do so, Seller may request permission in writing to substitute a different coal for the Coals covered by this Agreement. Seller's written request shall set forth in detail: (a) the reasons for the proposed substitution, (b) the time duration, shipments, or quantity covered by the proposed substitution, and (c) the quality parameters of the proposed substitute Coal. Buyer's failure to give written approval to Seller's request within thirty (30) calendar Days of the receipt of the request from Seller shall constitute a denial. Approval of any substitute coal may be subject to appropriate adjustments of the Contract Price and/or other terms and conditions which are acceptable to Buyer.

9). **Scheduling:** Buyer will advise Seller on or before the 15th day of each calendar month preceding scheduled shipments of the number of barges it desires to load during the succeeding calendar month to fulfill the Quantity and Buyer's desired loading dates and delivery schedule ("Delivery Schedule"). The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule. All deliveries will occur in approximate amounts of 20,833 tons per month. It is understood that the purchase of Coal hereunder is intended for the operation of ULH&P's East Bend electricity generating station (hereinafter referred to as the "Station").

10). **Sampling and Analysis:** Seller shall sample, via a mechanical sampler, and analyze Coal at its expense. Sampling shall be carried out following the American Society of Testing and Materials (ASTM) standard, as set forth in ASTM standard D2234 (Type I, condition A or B, systematic spacing). Analysis is to be done in accordance with applicable ASTM standards. Such analysis shall be final and binding and shall govern for payment.

Seller shall make available sample splits and a report of each sample's quality for Buyer upon request. Buyer, at its expense, may make arrangements to pick up samples. Seller shall retain, for a period of sixty (60) Days from the loading date, sample splits taken in accordance with the provisions of this Agreement for use by Seller and the independent laboratory specified below.

In the event of a disagreement over Coal analysis and upon Buyer and Seller selecting a mutually agreed upon independent laboratory, Seller shall provide sample splits to the independent laboratory for analysis. The cost of the independent analysis shall be equally shared between

Buyer and Seller; however, the cost of the independent analysis shall be paid by Buyer if the results of such analysis and Seller's analysis are within applicable ASTM standards for repeatability and reproducibility, or in the absence of ASTM standards, mutually agreeable coal industry standards. If Seller's results are not so confirmed, then the independent laboratory's results shall be accepted as the quality and characteristics of the Coal.

11). **Quality Adjustments:** The Contract Price of Coal delivered under this Agreement shall be adjusted in accordance with the following:

(a) BTU Price Adjustment (\$/ton):

$\$/\text{ton} = [(\text{Monthly Weighted Average Actual Btu/lb} - 13,000 \text{ BTU/LB}) / 13,000 \text{ BTU/LB}] \times \text{Contract Price.}$

Calculate the monthly weighted average Btu, "as received", utilizing individual Shipment tonnage to two (2) decimal places and the corresponding Shipment Btu, "as received", to the nearest whole Btu. The resulting monthly weighted average Btu, "as received", will be rounded to the nearest whole Btu.

(b) Ash Penalty Adjustment (\$/ton):

If the Monthly Weighted Average Actual Ash % exceeds 9.20 % (DRY BASIS), the Ash Penalty Adjustment shall be equal to:

$\$/\text{ton} = (\text{Monthly Weighted Average Actual Ash \%} - 9.20 \%) \times \0.50

Calculate the monthly weighted average ash, dry basis, utilizing individual Shipment tonnage to two (2) decimal places and the corresponding actual Shipment ash, dry basis, to two (2) decimal places. The resulting monthly weighted average ash, dry basis, will be rounded to the nearest two (2) decimal places.

(c) Sulfur Adjustment (\$/ton):

(i) Premium or Penalty for Coal designated for delivery to a unit owned or operated by Buyer, or one of Buyer's or Buyer's affiliates that do not have an operational flue-gas desulfurization facility ("Non-Scrubber Coal") shall be calculated as follows:

SO₂ Adjustment for Non-Scrubber Coal: If the monthly weighted average actual lbs SO₂/mmbtu varies from the Typical Monthly Weighted Average Specification for Sulfur Dioxide (SO₂) lb/mmbtu for Non-Scrubber Coal shipped in any calendar month, the following SO₂ Premium/ Penalty Adjustment shall be applied:

$\$/\text{ton SO}_2 \text{ Adjustment shall equal} = ((\text{Typical Monthly Weighted Average Specification for Sulfur Dioxide (SO}_2) \text{ lb /mmbtu} - \text{monthly weighted average actual lbs. SO}_2/\text{mmbtu}) \times (\text{monthly weighted average actual Btu/ lb.}) \times E) / 1,000,000.$

WHERE: E is defined for any given delivery month as the 3 day average SO₂ Price of allowances expressed in dollars per ton of SO₂ in the table entitled "AIR Daily Emission Allowance Indices" published in Energy Argus Air Daily, or its successor publication, for such calendar month of delivery as published on the 3rd, 4th and 5th Business Days of the subsequent month (e.g., spot price for allowances for January 2005 would be calculated using an average of the indices published in Energy Argus Air Daily on February 3, 4 and

7). In the event the market pricing published by Energy Argus Air Daily ceases to exist, an acceptable alternative source of market pricing shall be mutually agreed upon.

(ii) Penalty for Coal designated for delivery to a unit owned or operated by Buyer or one of Buyer's affiliates that has an operational flue-gas desulfurization facility ("Scrubber Coal") shall be calculated as follows:

SO₂ Penalty Adjustment for Scrubber Coal (\$/ton):

If the monthly weighted average actual lbs SO₂/mmbtu exceeds the Typical Monthly Weighted Average Specification for Sulfur Dioxide (SO₂) lb /mmbtu for Coal loaded by Seller in any calendar month, the SO₂ Adjustment for all Scrubber Coal shipped in any calendar month is equal to:

$\$/\text{ton} = (\text{Typical Monthly Weighted Average Specification for Sulfur Dioxide (SO}_2\text{) lb /mmbtu} - \text{monthly weighted average actual lbs. SO}_2\text{/mmbtu}) \times \text{monthly weighted average actual Btu/lb} \times ((E \times .10) + \$85) / 1,000,000.$

WHERE: E is defined for any given delivery month as the 3 day average SO₂ Price of allowances expressed in dollars per ton of SO₂ in the table entitled "Daily Market Assessments, SO₂ Allowances, Price for current vintage year" published in Energy Argus Air Daily, or its successor publication, for such calendar month of delivery as published on the 3rd, 4th and 5th Business Days of the subsequent month (e.g., spot SO₂ price (E) for allowances for January 2005 coal shipments would be calculated by using an average of the indices published in Energy Argus Air Daily on February 3, 4, and 7).

(iii) For Coal that is resold to a third party under Section 9. Scheduling, Buyer shall have the sole right to determine whether such Coal is Scrubber Coal or Non-Scrubber Coal, and accordingly which sulfur adjustment calculation, either (i) or (ii), shall be applied to the resale, and Buyer shall reflect the appropriate sulfur adjustment calculation in the final invoices issued in each month in accordance with Section 15.

For both the Scrubber and Non-scrubber adjustments, calculate the monthly weighted average sulfur, as received, utilizing individual Shipment tonnage to two (2) decimal places and the corresponding Shipment sulfur, "as received", to the nearest two (2) decimal places. The resulting monthly weighted average sulfur, as received, will be rounded to the nearest two (2) decimal places. Calculate the monthly weighted average SO₂/MMBtu by multiplying the monthly weighted average sulfur, "as received" (which has been rounded to the nearest two (2) decimal places), times 20,000 divided by the monthly weighted average Btu, as received (which has been rounded to the nearest whole Btu). The SO₂/MMBtu will be rounded to the nearest two (2) decimal places.

12). **Weight Determination:** The weight of each barge Shipment shall be determined by draft survey at barge loading as performed by an independent draft surveyor appointed by the Seller with the costs for Seller's account. If a certified belt scale system is installed at the Mine, or is available at any other approved barge loading facility, the weights from that system will be used. In the event weights are not determined at the point of loading, Buyer shall cause a barge draft survey to be completed prior to unloading of the Barges, and all costs associated therewith

shall be for the account of Seller. Such weights shall be final and binding and shall govern for payment.

All references to "ton" or "tons" in this Agreement or any invoice issued pursuant to this Agreement shall mean a ton of 2,000 pounds, Avoirdupois.

13). **Loading Terms:** Seller agrees to load to the barge carrier's designated minimum tonnage specifications. If Seller fails to load the barges to meet the specifications, the difference between the specified minimum tonnage and the actual tonnage times the barge rate (\$/ton) to Buyer's destination will be billed to Seller. Seller agrees to ensure that Coal is available and that the loading dock has the capacity to load barges within seventy-two (72) hours of placement. Failure to load barges within seventy-two (72) hours may result in demurrage charges to the Seller.

General Terms and Conditions

14). **Force Majeure:** If either Party is rendered unable, wholly or in part, by reason of Force Majeure to carry out its obligations under this Agreement, and if that Party gives to the other Party written notice within ten (10) calendar Days of the Force Majeure, the obligations of the Party giving the notice, other than any obligation to make money payments, so far as they are affected by the Force Majeure, shall be excused during, but no longer than, the continuance of the Force Majeure; provided that the affected Party shall diligently take all commercially reasonable actions to remove as quickly as possible the Force Majeure or its effects, or as much thereof as possible.

For purposes of this Article, the term "Force Majeure" shall mean any event or condition (i) that is beyond the reasonable control of the party affected, which in the case of Buyer is deemed to be ULH&P for all purposes of and under this Section 14, and (ii) that such Party is unable to prevent or provide against by the exercise of reasonable diligence. To the extent they satisfy the above definition, examples of such events or conditions include, but are not limited to: acts of God or of the public enemy; insurrection or riots; strikes or other differences with workmen; fire; storm; flood; explosion; nuclear disaster; shortage of utility, facility, material or labor; embargo; breakdown of equipment; order of civil or military authority; compliance with or other action taken to carry out the intent or purpose of any law or regulation; shortage of barges or other interruption in transportation resulting from identifiable events and conditions of such nature and not due to general system-wide congestion; adverse geological conditions; and any other cause, whether of the kind specifically enumerated above or otherwise, which is not reasonably within the control of the Party invoking the Force Majeure provisions hereof.

The Party affected by the Force Majeure shall remedy the Force Majeure with all reasonable dispatch and will keep the other Party advised as to the continuance of the Force Majeure event; provided, however, that this provision shall not require Seller to deliver, or Buyer to receive, the Coal at points other than the Delivery Point for the authorized Source including allowable substitutions under the Agreement. The requirement that any Force Majeure shall be remedied diligently with the use of all commercially reasonable actions shall not require the settlement of strikes, lockouts, or other labor difficulty by the Party involved, contrary to its wishes. The handling of all such difficulties shall be entirely within the discretion of the Party concerned.

A change in market conditions including the ability of Seller to sell Coal at a higher price, or Buyer or Buyer's customer to buy Coal at a lower price, whether or not foreseeable shall not be considered Force Majeure.

During any period of Force Majeure, to the extent the Seller is unable to deliver Coal to the Buyer, the Buyer may purchase replacement coal from others, and to the extent the Buyer is unable to purchase Coal from the Seller, the Seller may deliver and sell to others the Coal that was otherwise intended for the Buyer.

A complete or partial Force Majeure event that persists for a duration greater than twenty (20) Days shall only be made up upon mutual consent of the Parties. Any deficiencies in deliveries due to Force Majeure events of a duration of twenty (20) Days or less shall, at the sole discretion of the Party not claiming Force Majeure, be made up within the next sixty (60) Days.

If an event of complete or partial Force Majeure persists for a continuous period of six (6) months, then the Party not claiming Force Majeure shall have the option, upon three (3) Days' prior written notice, to terminate the Agreement and the associated obligations of the Parties thereunder (other than payment obligations for prior performance thereunder).

If Seller claims Force Majeure and is unable to meet all of its sales obligations under this Agreement and any other of its coal sales agreements involving coal of a similar type and quality as the Coal, or if Buyer claims Force Majeure and is unable to meet all of its purchase obligations under this Agreement and any other of its or its affiliates' coal purchase agreements involving coal of a similar type and quality as the Coal, then any reductions in Seller's deliveries or Buyer's or its affiliates' purchases (as applicable) shall be allocated in a fair and reasonable manner among the affected transaction(s) and such other coal supply or purchase agreements involving coal of the same type and quality as the Coal, to the extent contractually permitted by such Agreements.

The Parties' respective obligations under this Agreement are subject to ULH&P's ability to operate the Station receiving the Coal supplied hereunder and Seller's ability to operate the mining complex producing the Coal supplied hereunder under existing permits, to maintain such permits and to obtain new permits as required, and to the condition that governmental, regulatory, and court actions will neither hinder nor preclude the respective ability of each Party to operate the pertinent facilities as planned, such that the substantial inability of either Party to do so shall excuse performance of its obligations under this Agreement to the extent such performance is prevented thereby, provided however that such inability to so operate its facilities for solely economic reasons shall not so excuse a Party's performance of its obligations under this Agreement.

15). **Payment:** The Buyer will self-invoice bi-monthly. Shipments loaded at the Delivery Point during the first through the fifteenth of each month are payable ten (10) Days after the end of the month at the Contract Price. Shipments loaded during the sixteenth through the end of each month are payable, with quality adjustments for all Shipments loaded during the month, twenty-five (25) Days after the end of each month. Buyer shall separately self-invoice for Coal designated as Scrubber Coal, to which the SO₂ Penalty Adjustment for Scrubber Coal shall apply, and Coal designated as Non-Scrubber Coal, to which the SO₂ Premium/Penalty Adjustment for Non-Scrubber Coal shall apply, and on the final invoices for each month shall identify the tons to which the applicable adjustment applies. Each invoice shall include the necessary information for Seller to match Shipments for each invoice and otherwise to verify the amount being invoiced.

The invoices generated pursuant to the preceding provisions of this Section 15 are hereinafter referred as the "Invoices". Pursuant to the provisions below, Seller shall be paid for the Invoices by electronic transfer in immediately available United States funds to the address below:

Buyer Billing Contact:

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

Seller Billing Contact:

Attn: _____
Email _____

Seller's Payment Address:

Bank Name: _____

Account Number: _____

ABA number: _____

Account Name: _____

Ref _____

Buyer hereby represents and warrants to Seller that, pursuant to the Synfuel Agreement, ULH&P is obligated to make all payments to Buyer under such agreement to Buyer's depository account at _____ (the "Bank"), Account No. _____ (the "Account").

Buyer hereby covenants that it will not modify such provisions of the Synfuel Agreement without Seller's prior written consent. Buyer hereby grants to Seller a security interest in and to the Account. Bank, Buyer and ULH&P, in its capacity as Agent for Seller and all of the Other Suppliers (as defined below), has entered into a Control Agreement in the form attached hereto as Exhibit A pursuant to which Seller's security interest in and to the Account is perfected. ULH&P shall, on or prior to the Effective Date of this Agreement, take assignment and assume all obligations of CG&E under the Control Agreement. Seller hereby appoints ULH&P as its Agent for purposes of controlling the Account. ULH&P has accepted such appointment and agreed that it shall make payments from the Account to Seller pursuant to the Invoices on the 10th and 25th Day of each calendar month, or if the Bank shall be closed on such date, the next day that the Bank is open. On each payment date, the security interest of Seller shall be *pari passu* with the security interests of all other suppliers of coal to Buyer (the "Other Suppliers"), and if the funds in the Account are not sufficient to pay the amounts payable to Seller and each of the Other Suppliers in full, then Agent shall make payment pro rata to each of Seller and the Other Suppliers.

If the Parties are required to pay any amount on the same day or in the same month, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount may pay to the other Party the difference between the amounts owed.

If Buyer does not make payment for Coal shipped in accordance with the terms set forth above, Seller has the right to invoice Buyer interest, equal to the prime lending rate as published in The Wall Street Journal on the first Monday after such funds become overdue plus two percent (2%) (the "Interest Rate"), on the outstanding balance, which shall be payable within ten (10) calendar Days of receipt of the invoice by Buyer.

16). **Billing Dispute:** If Seller, in good faith, disputes an invoice, Seller shall no later than the time of payment of the invoice notify Buyer of the basis for the dispute. However, Buyer is obligated to pay any undisputed amount when due. If any amount withheld under dispute by Buyer is ultimately determined to be due to Seller, it shall be paid within one (1) Business Day after such determination, along with interest accrued at the Interest Rate from the original due date until the date paid. Inadvertent overpayments shall either be returned by Seller, or deducted by Buyer from subsequent invoice or invoices, as the case may be.

17). **Remedies for Failure to Deliver or Receive:** The remedies set forth in this Section 17 shall be the non-defaulting Party's non-exclusive monetary remedies for the defaulting Party's failure to deliver or receive Coal, as applicable, prior to the non-defaulting Party's termination of the Agreement due to an Event of Default pursuant to Section 19:

(a) As an alternative to the damages provision below, if the Parties mutually agree in writing, the non-defaulting Party may schedule deliveries or receipts, as the case may be, pursuant to such terms as the Parties agree in order to discharge some or all of the obligations to pay damages. In the absence of such agreement, the damages provision of this Section 17 shall apply.

(b) Unless excused by Force Majeure or Buyer's failure to perform, and in the event that Seller delivers 80% or more of the Quantity of Coal to be delivered in any calendar month during the Term of this Agreement pursuant to the Delivery Schedule, for barge deliveries, then Seller shall have thirty (30) Days to make up the shortfall of tons of Coal Seller failed to deliver in given month ("Make-Up Tons") without penalty to Seller. Any shipments in any month shall be deemed to be Make-Up Tons until all deficiencies from any previous months, if applicable, are satisfied. Unless excused by Force Majeure, or Buyer's failure to perform, if Seller delivers less than (i) 80% of the Quantity of Coal to be delivered hereunder pursuant to the Delivery Schedule plus (ii) the cumulative Make Up Tons then, Buyer and Seller shall enter into "good faith" negotiations to determine a mutually agreeable make-up schedule. If after fifteen (15) Days, a mutually agreeable make up schedule has failed to be agreed upon, then Seller shall pay to the Buyer for each ton of the entire deficiency an amount equal to the positive difference, if any, incurred by Buyer as a result of taking delivery of substitute coal at a location other than the Delivery Point between the replacement price paid less the then current Contract Price or, absent such a purchase, the Market Price for such Quantity of Coal FOB the Delivery Point, as determined by Buyer in a commercially reasonable manner and consistent with the definition of "Market Price" as set forth below, less the then current Contract Price. It is expressly agreed that Buyer shall not be required to enter into a replacement transaction in order to determine the Market Price. For the purposes of this paragraph, any Quantity of Coal delivered in any calendar month that has been rejected by Buyer in accordance with Section 10 hereof shall not be considered to have been shipped.

(c) Unless excused by Force Majeure or Seller's failure to perform, if Buyer fails to accept at least 80% of the Quantity of Coal to be received in any calendar month during the Term of this Agreement pursuant to the Delivery Schedule for barge deliveries, then Buyer shall have thirty (30) Days to make up the shortfall of tons of Coal Buyer failed to accept delivery in a given month ("Make-Up Tons") without penalty to Buyer. Any shipments in any month shall be deemed to be Make-Up Tons until all deficiencies from any previous months, if applicable, are satisfied. If Buyer accepts less than (i) 80% of the Quantity of Coal to be received hereunder pursuant to the Delivery Schedule plus (ii) the cumulative Make-Up Tons then, Seller and Buyer shall enter into "good faith" negotiations to determine a mutually agreeable make-up schedule. If after fifteen (15) Days, a mutually agreeable make up schedule has failed to be agreed upon then,

Buyer shall pay to the Seller for each ton of the entire deficiency an amount equal to the positive difference, if any, obtained by subtracting the Market Sales Price from the then current Contract Price for the deficiency. For the purposes of this paragraph, any quantity of Coal delivered in any calendar month that has been rejected by Buyer in accordance with Section 10 hereof shall not be considered to have been shipped.

(d) Both Parties shall be subject to a commercially reasonable good faith obligation to mitigate any damages hereunder. Further, the non-defaulting party shall provide timely notice of any deficiency and the calculated damages to the defaulting party.

(e) Payment of amounts, if any, determined under paragraph (b) or (c) of this Section 17 shall be made within fifteen (15) calendar Days of receipt of notice by the defaulting party. All such determinations shall be made in a commercially reasonable manner.

(f) If a Party obligated to make a payment under this Section 17 timely makes such payment to the other Party, no failure to perform as described in this Section 17 shall constitute an Event of Default pursuant to Section 19.

(g) Any good faith dispute between the Parties arising under Section 17 shall be subject to resolution under Section 32.

18). **Performance Assurance:** At any time during the term of this Agreement, either Party ("Party X" or the "Exposed Party") may require the other Party ("Party Y" or the "Non-Exposed Party") to provide information reasonably required to ascertain Party Y's ability to meet its material obligations pursuant to this Agreement, including as applicable and without limitation the obligation to receive, transport and pay for coal, the obligation to produce and tender coal for delivery and the obligation to pay damages in the event Party Y fails to perform its obligations hereunder. If Party X has reasonable grounds to believe that Party Y's ability to perform has become unsatisfactory, Party X may provide Party Y with written notice requesting Performance Assurance from Party Y in a commercially reasonable manner; *provided, however*, that a request for Performance Assurance shall not be made solely on the basis of coal market conditions or any change thereto relative to the Contract Price or any purported difference between the Contract Price and the Market Price for Coal. Upon receipt of such notice, Party Y shall have five (5) Business Days to provide such Performance Assurance to Party X. Failure by Party Y to provide such Performance Assurance within such time shall be deemed an Event of Default hereunder.

For purposes of this Section 18, "Performance Assurance" means collateral in the form of cash, Letter(s) of Credit, other commercially reasonable forms of security or performance assurance satisfactory to the Party requesting such Performance Assurance, or verifiable evidence of a Party's ability to produce and tender Coal for delivery (in the case of Seller) or to accept delivery of and pay for Coal (in the case of Buyer) in accordance with the terms of this Coal Supply Agreement where such verifiable evidence is reasonably satisfactory to the Party requesting such Performance Assurance.

Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:

(i) Unless otherwise agreed to in writing by the parties, each Letter of Credit shall be maintained for the benefit of the Exposed Party. The Non-Exposed Party shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank that issued an outstanding

Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or other Performance Assurance, in each case at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank issuing a Letter of Credit shall fail to honor the Exposed Party's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of the Exposed Party either a substitute Letter of Credit that is issued by a bank acceptable to the Exposed Party or other Performance Assurance, in each case within five (5) Business Days after such refusal.

(ii) As one method of providing Performance Assurance, the Non-Exposed Party may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.

(iii) Upon the occurrence of a Letter of Credit Default, as defined below, the Non-Exposed Party agrees to provide to the Exposed Party either a substitute Letter of Credit or other Performance Assurance, in each case on or before the fifth (5th) Business Day after the occurrence thereof.

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

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

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

19). **Event of Default:** An event of default and breach of the Agreement with respect to either Party ("Event of Default") shall include any of the following:

(a) the failure of either Party to make when due any payment required hereunder if such failure is not remedied within five (5) Business Days after notice of such failure is given to the defaulting Party by the non-defaulting Party;

(b) subject to the other provisions of this Agreement, the failure of either Party to comply with any or all of its other respective obligations in good faith as herein set forth, including without limitation Seller's failure to tender coal for delivery as scheduled and Buyer's failure to accept coal at the Delivery Point as scheduled, and such noncompliance is not cured within ten (10) Business Days after notice thereof to the defaulting Party;

(c) failure to provide Performance Assurance in accordance with Section 18;

(d) either Party or either Party's guarantor (i) filing a petition in bankruptcy, (ii) having such a petition filed against it, (iii) becoming otherwise insolvent or unable to pay its debts as they become due;

(e) the failure of a Party's guarantor, if any, to perform any covenant set forth in its guaranty, or such guaranty shall expire or be terminated or shall cease to guarantee the obligations of such party as set forth in the guarantee, or such guarantor shall become subject to any of the events specified in (d), (i), (ii) or (iii) above.

An Event of Default shall be considered to substantially impair the value of this Agreement and shall be treated as a breach of the whole within the meaning of Uniform Commercial Code Section 2-612.

20). **Buyer's Damages for Breach:** The measure of damages for breach or an Event of Default by the Seller is (a) the positive difference, if any, resulting from subtracting the Contract Price from the Market Price at the time the Buyer learned of the breach, times (b) the undelivered Quantity, less (c) expenses saved in consequence of the Seller's breach.

21). **Seller's Damages for Breach:** The measure of damages for breach or an Event of Default by the Buyer is (a) the positive difference, if any, resulting from subtracting the Market Sales Price from the Contract Price at the time the Seller learned of the breach, times (b) the undelivered Quantity, less (c) expenses saved in consequence of the Buyer's breach.

22). **Rights and Remedies; Limitation of Liability:** The rights and remedies granted under this Agreement shall not be exclusive but shall be in addition to all other rights and remedies available at law or in equity. PROVIDED, HOWEVER, THAT NEITHER SELLER NOR BUYER SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OR BUSINESS INTERRUPTION DAMAGES, WHETHER BY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

23). **Insurance:** Seller shall maintain, or cause to be procured and maintained, Statutory Longshore and Harbor Workers' Compensation Act Insurance or Statutory State Workers' Compensation Insurance or Jones Act (Maritime Employers Liability), whichever is applicable, covering Seller's responsibilities with respect to all workers at the docks and fleets at the Delivery Point, and Comprehensive Marine Liability insurance (in any combination of primary

and excess coverage), including but not limited to Protection and Indemnity Liability, Full Collision Liability, Marine Operators Liability, Marine Contractual Liability, Wharfinger Liability, Hull and Cargo Legal Liability and Cost of Removal of Wreck and Cargo (including voluntary or statutory), where applicable. Buyer understands and agrees that Seller has, or may create and/or maintain, a high deductible commercial General liability and other liability insurance programs in a form and amount usual, customary and commercially reasonable for companies of similar size and complexity. Buyer further understands and agrees that Seller is an approved self-insurer for worker's compensation but that Seller purchases excess workers' compensation insurance. Seller at all times shall take such action as necessary to be in and remain in compliance with the statutes of any state regulating worker's compensation self-insurance.

Buyer shall comply with all workers' compensation laws covering Buyer's responsibilities with respect to all of its employees, and maintain Marine Liability insurance (in any combination of primary and excess coverage), including but not limited to Hull and Machinery, Protection & Indemnity (as respects to Buyer owned vessels), Marine Contractual Liability, Wharfinger Liability, removal of wreck, both voluntary and statutory and Cargo.

24). **Title/ Risk of Loss:** Seller warrants good title to all Coal delivered hereunder, free and clear of all claims and encumbrance. Title and risk of loss shall pass to the Buyer as the Coal is loaded into each barge at the Delivery Point.

25). **Assignment:** Neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. If Buyer or Seller consents to any assignment, such consent shall not relieve the other Party of or from any of the obligations or duties under this Agreement, and such consent shall be subject, as the case may be, to Seller's or Buyer's compliance with all such respective duties and obligations and to Buyer's or Seller's respective rights under this Agreement. Any assignee shall be considered the agent, as the case may be, of Seller or Buyer.

All requests for consent, together with a copy of the proposed instrument of assignment, shall be in writing and submitted to Buyer or Seller, as the case may be, not less than thirty (30) Days in advance of the effective date of such proposed assignment.

26). **Entire Agreement:** This Agreement is the final and entire agreement between the Parties. No modification or amendment of this Agreement shall be effective or binding unless set forth in writing signed by both Parties. No purchase order form issued by Buyer under this Agreement or otherwise shall become a part of this Agreement and binding upon Seller unless made in writing and signed by Seller. Notwithstanding the preceding sentence, from time to time Buyer may issue purchase orders to Seller with respect to the subject matter of this Agreement for Buyer's internal administrative purposes, provided such purchase orders shall not be construed as part of this Agreement.

27). **Waiver:** Any failure by Buyer or Seller at any time, or from time to time, to enforce or require the strict keeping and performance by the other Party of any of the terms or conditions of this Agreement shall not constitute a waiver by Buyer or Seller of any such terms or conditions, and shall not affect or impair such terms or conditions in any way or the right of Buyer or Seller at any time to avail itself of such remedies as it may have for any such breach or breaches of such terms or conditions. In order for a waiver by Buyer or Seller of any term, condition, covenant or agreement of the Agreement to be effective and binding against Buyer or Seller, such waiver must be set forth in a writing that describes such waiver in detail and that is signed by an

authorized officer of, as the case may be, Buyer or Seller. Verbal or other instructions, orders or directives by Buyer's or Seller's personnel or any course of performance or course of dealing is not and shall not be deemed to be a waiver by Buyer or by Seller unless in writing satisfying the requirements of the previous sentence is executed by an authorized officer of that Party. In any event, such properly-issued written waivers shall be effective only as to the specific event or circumstance described in the written waiver form and no such waiver shall be deemed to be a continuing waiver or a waiver with respect to future events or circumstances, even if the facts surrounding such future events and circumstances are similar or identical to those involved in the properly-issued written waiver.

28). **Governing Law:** This Agreement shall be construed in accordance with and governed by the laws of the State of New York, including without limitation the Uniform Commercial Code, without giving effect to the doctrine of conflict of laws.

29). **Confidentiality:** Each Party hereby acknowledges that this Agreement contains confidential information that may place such a Party at a competitive disadvantage if disclosed to the public. Therefore, the terms of this Agreement shall be preserved as confidential by the Parties, except:

- (a) to the extent necessary for the disclosing Party to comply with any applicable laws, rules, regulations, statutes or ordinances or otherwise as necessary to the conduct of its business affairs, including necessary disclosures to outside professionals such as accountants and auditors, engineering and testing personnel, and legal counsel;
- (b) by commission of a valid subpoena and/or order of a court of competent jurisdiction, provided, however, the disclosing Party shall provide the other Party with prompt notice of such request so that it may seek an appropriate protective order and/or waive the disclosing Party's compliance with this provision (if in the absence of a protective or receipt of a waiver hereunder, the disclosing Party is nonetheless, in the opinion of its counsel, compelled to disclose the terms of this Agreement to any tribunal or else stand liable for contempt or suffer other censure or penalty, the disclosing Party may disclose such information to such tribunal without liability hereunder); or
- (c) to a subsidiary, parent or affiliated corporation of Buyer or Seller.

30). **Notices:** All communications, notices, certificates and the like issued under this Agreement which are required to be transmitted shall be considered delivered when sent via Certified Mail (Return Receipt Required), a recognized commercial common carrier (with acknowledgment of receipt required), facsimile, electronic transmission, or personal delivery directly as follows:

If to Buyer then to:
The Union Light Heat and Power Company
P. O. Box 960
Cincinnati, OH 45201-0960
Attention: Vice President, Commercial Fuels
Fax: 513-419-5690

Coal Seller:

Coal Buyer:

Tyrone Synfuels LP

c/o CQ Inc.

160 Quality Center Road

Homer City, PA 15668

Attn: _____

Attn: Clark D. Harrison

Tel. _____

(724) 479-6016

Fax. _____

(724) 479-4181

Ref #: _____

Ref #: HC10357E

Coal Supply Agreement

This Agreement, by and between _____, an Ohio Corporation (collectively hereinafter "Seller"), and Tyrone Synfuels LP, a Delaware limited partnership (hereinafter "Buyer"), establishes the terms and conditions for the sale and purchase of Coal (The "Agreement"). Seller and Buyer can be individually referred to as a "Party" or collectively as "Parties."

1). **Commodity:** Crushed, bituminous Coal containing no synthetic fuels, substantially free from any extraneous material and debris, with no intermediate sizes to be added or removed and otherwise meeting the Specifications of this Agreement (hereinafter "Coal" or "Commodity").

2). **Contract Price:** \$ _____ per ton at Delivery Point. The price shall include all taxes, fees, and any proper charges.

3). **Term:** The effective date of this agreement is January 1, 2006 and it shall remain in effect until the date that is the earlier of (i) thirty (30) days after the date on which either Party gives written notice to the other Party of its election to terminate this Agreement, (ii) March 31, 2006, and (iii) the date on which the Synthetic Fuel and Coal Supply Agreement by and between The Cincinnati Gas & Electric Company ("CG&E") and Tyrone Synfuels, L.P. dated March 11, 2004, as amended and assigned to The Union Light, Heat and Power Company ("ULH&P") ("Synfuel Sales Agreement"), terminates (the "Synfuel Termination Date"). Following any termination pursuant to clause (i) and (ii) above, this Agreement and any relevant purchase order shall remain in effect with respect to any purchase entered into on or prior to the termination date until each Party has fulfilled all of its obligations with respect to all such purchases, or, if earlier,

the Synfuel Termination Date. All purchases entered into prior to the Synfuel Termination Date shall terminate on the Synfuel Termination Date. No deliveries of coal shall be made to Buyer following the Synfuel Termination Date. No termination of this Agreement shall affect or excuse the performance of any party under any provision of this Agreement that by its terms survives any such termination, including, without limitation, Buyer's obligation to pay for coal delivered on or before the termination date.

4). Quantity: Buyer has the option to purchase coal hereunder up to _____ tons, to be determined monthly ratably. A ton shall be two thousand pounds avoirdupois.

5). Delivery Point: F.O.B. barge M.P. 92.8 on the Ohio River. All coal sold hereunder shall be delivered to ULH&P's East Bend Station located Rabbit Hash, KY.

6). Specifications: Per Attached Schedule 1

7). Source(s): Mine:

Mine Operating Co.:

Mine State:

Mine County:

BOM District:

8). Scheduling: Buyer will advise Seller on or before the 15th day of each calendar month preceding scheduled shipments of the number of unit trains, trucks or barges it desires to load during the succeeding calendar month to fulfill the transaction Quantity and Buyer's desired loading dates and delivery schedule ("Delivery Schedule"). The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule within the Nomination Period and within each month during the Nomination Period. All deliveries will occur in approximate ratable amounts over the term of a transaction. The delivery period shall begin no earlier than the first day of the delivery month and at least seven (7) days before the end of the month. Delivery must be completed by the last day of the delivery month.

Buyer may reject any Shipment falling outside of the Specifications, shipments that may cause handling problems, or shipments that are contaminated with foreign materials with written notification to Seller. Buyer shall return Coal to Seller at Seller's cost. Seller shall make best efforts to replace the rejected Coal no later than the last calendar day of the delivery month.

9). Sampling and Analysis: Coal sampled via mechanical sampler for each Shipment shall be performed by Buyer at the Buyer's Station. Analysis to be performed in accordance with ASTM standards by Buyer with the cost for such sampling and analysis to be for the Buyer's account. Such analysis shall be final and binding and shall govern for payment.

Schedule 1
Standard to Confirmation: Specifications

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

<u>Specification</u>	<u>Monthly Weighted Average Guaranteed Quality</u>	<u>Shipment Rejection Limits (Barge / Unit Train)</u>
BTU/LB.	11,750	< 11,400
MOISTURE	8.0 %	> 10.0 %
ASH	12.0 %	> 14.0 %
SULFUR DIOXIDE (SO ₂)	6.50 lb./MMBTU	> 6.75 lb./MMBTU
VOLATILE	30 %	<28 %
Size (2" x 0"):		
-- Top size (inches)	<2 "	> 3 "
-- Fines (% by wgt)		
Passing 1/4" screen	< 40 %	> 50 %
GRINDABILITY (HGI)	50	< 45
<u>ASH FUSION TEMPERATURE (°F) (ASTM D1857)</u>		
<u>REDUCING ATMOSPHERE</u>		
Initial Deformation	_____	min. _____
Softening (H=W)	2,200° F	min. 2,100° F
Hemispherical (H=1/2W)	_____	min. _____
Fluid	_____	min. _____

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

If to Seller then to: _____

Fax: _____

Attn: _____

with a courtesy copy faxed to:

A Party's change in the notice information set forth above, such as due to an address or name change, shall be provided to the other Party in writing in accordance with the above notice requirements.

31). **Limitation on Warranty:** Except as expressly set forth herein, Seller expressly disclaims any other representations or warranties, written or oral, express or implied, including merchantability, or fitness for any particular purpose.

32). **Dispute Resolution:**

A. **Procedure.** If a dispute arises between the Parties relating to this Agreement, the Parties agree to use the following procedure prior to either Party pursuing other available remedies:

- (i) A meeting shall be held promptly between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.
- (ii) If within thirty (30) Days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, the dispute shall be submitted to binding arbitration pursuant to subsection B below.

B. **Arbitration.** Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association ("AAA"), except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes of maintaining the status quo until such time as the arbitration award is rendered or the dispute is otherwise resolved. The arbitration shall be conducted in Pittsburgh, Pennsylvania and the laws of New York shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) calendar Days of service of a demand for arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by Buyer and one shall be selected by Seller. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the Parties. If the arbitrators appointed by the Parties cannot agree upon the third arbitrator within ten (10) calendar Days, then

either Party may apply to the AAA for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) calendar Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by such Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Section. Both Parties agree that during the pendency of any dispute between the Parties, including without limitation any dispute regarding an alleged Event of Default or any purported termination or cancellation of the Agreement, Seller will continue to tender for delivery and sell Coal and Buyer will continue to accept delivery of and pay for Coal without interruption.

33). **Representations and Warranties:** On the Effective Date hereof, each Party represents and warrants to the other that:

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

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

(c) It has, or its affiliates have, or will diligently pursue, any and all necessary governmental and other third party permits, approvals and licenses required in connection with the execution, delivery and performance of this Agreement;

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

(e) There are no known suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority that materially affect and adversely affect its ability to perform its obligations under this Agreement; and

(f) With respect to this Agreement, it, or one or more of its affiliates, is a producer, processor, commercial user or merchant handling Coal, and it is entering into such Agreement for purposes related to its business as such.

34). *[Intentionally omitted.]*

35). **Other Definitions:**

(a) "Business Day" means any day on which the Federal Reserve member banks in New York City are open for business. A Business Day shall run from 8:00 a.m. to 5:00 p.m. Eastern Prevailing Time.

(b) "Day" means a calendar day.

(c) "Letter of Credit" means one or more irrevocable, transferable standby letters of credit from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3 from Moody's.

(d) "Market Price", for all purposes of this Agreement, means and shall be determined with reference to all appropriate data, including but not limited to coal prices agreed to by parties in arm's-length transactions under other coal supply agreements similar in nature to this Agreement with respect to quantity and duration, applicable to coal shipments to be made during the period(s) when Coal to be supplied hereunder is not delivered or accepted, as the case may be, and may include but shall not be based exclusively on monthly OTC price data or other such measures of the market which reflect pricing for a single trainload or barge of coal.

(e) "Market Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells (if at all) the deficiency (plus additional transportation charges, if any, incurred by Seller as a result of delivering Coal to a location other than the Delivery Point) or, absent such resale, the Market Price for such Quantity of Coal FOB the Delivery Point, as determined by Seller in a commercially reasonable manner. It is expressly agreed that Seller shall not be required to enter into a replacement transaction in order to determine the Market Sales Price.

THE PARTIES, BY THEIR AUTHORIZED AGENTS, HEREBY EXECUTE THIS COAL SUPPLY AGREEMENT WHICH SHALL BE EFFECTIVE ON THE EFFECTIVE DATE AS DEFINED ABOVE

TYRONE SYNFUELS, L.P.
(BUYER)

(SELLER)

ITS GENERAL PARTNER

BY: Clark Kramer
 President & CEO
TITLE: CO Inc, General Partner
DATE: January 30, 2006

BY: _____
TITLE: _____
DATE: Jan. 26, 2006

**Schedule 1
Standard to Confirmation: Specifications**

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

<u>Specification</u>	<u>Typical Monthly Weighted Average</u>	<u>Shipment Rejection Limits (Barge / Unit Train)</u>
BTU/LB.	13,000	< 12,200
MOISTURE	8.50%	na
ASH (dry basis)	9.20%	>10.80%
SULFUR DIOXIDE (SO ₂)	4.50 lb./MMBTU	> 5.00 lb./MMBTU
VOLATILE	34%	na
Size (2" x 0"):		
-- Top size (inches)	<2"	
-- Fines (% by wgt)		
Passing 1/4" screen		> 60%
GRINDABILITY (HGI)	52	< 47
<u>ASH FUSION TEMPERATURE (°F) (ASTM D1857)</u>		
<u>REDUCING ATMOSPHERE</u>		
Softening (H=W)	2,200 °F	na

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

TYRONE SYNFUELS, L.P.

414 Innovation Drive, Blairsville, PA 15717

Phone: 724•459•8500

Fax: 724•459•8535

January 30, 2006

Subject: TSLP Coal Supply Agreement (East Bend Station)

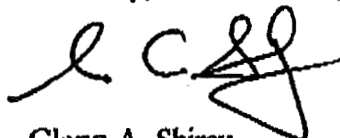
Dear

Please find enclosed one signed copy of the Coal Supply Agreement to supply coal from the

to ULH&P's East Bend Generating Station.

For future reference, please note the new address for Tyrone Synfuels, L.P. as shown in the
letterhead above.

Sincerely,



Glenn A. Shirey
Project Manager
CQ Inc., General Partner

Enclosure

xc: Mr. Larry Carter, Cinergy Corp.

Coal Seller:

Coal Buyer:

**The Union Light, Heat and Power
Company**

139 E. Fourth Street

Cincinnati, Ohio 45202

Attn:

Attn: Kim Lubrecht

Tel.

Tel. 513 419 5302

Fax.

Fax. 513 419 5840

Ref #: _____

Ref #: HC10357E

Coal Supply Agreement

This Agreement, by and between

, an Ohio Corporation (hereinafter "Seller"), and The Union Light, Heat and Power Company, a Kentucky corporation (hereinafter "Buyer"), establishes the terms and conditions for the sale and purchase of Coal (The "Agreement"). Seller and Buyer can be individually referred to as a "Party" or collectively as "Parties."

- 1). Commodity: Crushed, bituminous Coal containing no synthetic fuels, substantially free from any extraneous material and debris, with no intermediate sizes to be added or removed and otherwise meeting the Specifications of this Agreement (hereinafter "Coal" or "Commodity").
- 2) Transaction Date: 12/20/05
- 3). Contract Price: \$: _____ per ton at Delivery Point. The price shall include all taxes, fees, and any proper charges.
- 4). Term: January 1, 2006 through March 31, 2006
- 5). Quantity: _____ tons. Pursuant to the Coal Supply Agreement between Tyrone Synfuel LP ("Tyrone") and Seller dated _____ ("Tyrone Agreement"), Tyrone and Seller may enter into purchase orders pursuant to which Tyrone will purchase coal from Seller that would otherwise be purchased pursuant to this Agreement that corresponds to a particular Tyrone purchase order ("Corresponding Tyrone Purchase Order"). Seller acknowledges and agrees that any coal that Tyrone purchases pursuant to a Corresponding Tyrone Purchase Order shall be credited towards the satisfaction of Buyer's obligation to purchase coal under this Agreement, to the same extent as if Buyer had purchased such coal. The Corresponding Tyrone Purchase Order and Tyrone Agreement shall govern such transaction between Seller and Tyrone. Seller further

acknowledges that Buyer shall have no obligations under this Agreement or any purchase order with respect to any coal that Tyrone purchases or agrees to purchase, and agrees that Seller shall look solely to Tyrone for the payment for, and for the performance of any obligations with respect to, any coal that Tyrone purchases or agrees to purchase from Seller pursuant to the Tyrone Agreement or any Corresponding Tyrone Purchase Order.

Buyer agrees that any coal that Tyrone agrees to purchase pursuant to a Corresponding Tyrone Purchase Order that is shipped for delivery to Buyer's East Bend facility after the date on which the Synthetic Fuel and Coal Supply Agreement by and between The Cincinnati Gas & Electric Company and Tyrone Synfuels, L.P. dated March 11, 2004, as amended and assigned to Buyer, is terminated, shall be purchased by Buyer pursuant to this Agreement.

- 6). Delivery Point: F.O.B. barge M.P. 92.3 on the Ohio River
- 7). Specifications: Per Attached Schedule 1

Buyer may reject any Shipment falling outside of the Specifications, shipments that may cause handling problems, or shipments that are contaminated with foreign materials with written notification to Seller. Buyer shall return Coal to Seller at Seller's cost. Seller shall make best efforts to replace the rejected Coal no later than the last calendar day of the delivery month.

- 8). Source(s): Mine:

9). Scheduling: Buyer will advise Seller on or before the 15th day of each calendar month preceding scheduled shipments of the number of unit trains, trucks or barges it desires to load during the succeeding calendar month to fulfill the transaction Quantity and Buyer's desired loading dates and delivery schedule ("Delivery Schedule"). The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule within the Nomination Period and within each month during the Nomination Period. All deliveries will occur in approximate ratable amounts over the term of a transaction. The delivery period shall begin no earlier than the first day of the delivery month and at least seven (7) days before the end of the month. Delivery must be completed by the last day of the delivery month.

10). Sampling and Analysis: Seller shall sample, via a mechanical sampler, and analyze Coal at its expense. Sampling shall be carried out following the American Society of Testing and Materials (ASTM) standard, as set forth in ASTM standard D2234 (Type I, condition A or B, systematic spacing). Analysis is to be done in accordance with applicable ASTM standards. Such analysis shall be final and binding and shall govern for payment.

Seller shall make available sample splits and a report of each sample's quality for Buyer upon request. Buyer, at its expense, may make arrangements to pick up samples. Seller shall retain, for a period of 60 days from the loading date, sample splits taken in accordance with the provisions of this Agreement for use by Seller and the independent laboratory specified below.

In the event of a disagreement over Coal analysis and upon Buyer and Seller selecting a mutually agreed upon independent laboratory, Seller shall provide sample splits to the independent laboratory for analysis. Such analysis shall be accepted as the quality of Coal received. The cost of the independent analysis shall be equally shared between Buyer and Seller; however, the cost of the independent analysis shall be paid by Buyer if the results of such analysis and Seller's analysis are within applicable ASTM standards for repeatability and reproducibility, or in the absence of ASTM standards, mutually agreeable coal industry standards. If Seller's results are

not so confirmed, then the laboratory's results shall be accepted as the quality and characteristics of the Coal.

11). Quality Adjustments:

Btu (Check One): N/A
 Btu price adjustment (\$/ton):

.If the monthly weighted average actual BTU/lb. is within +/- 200 Btu/lb. of the monthly weighted average guarantee Btu/lb then no adjustment will be made. If the monthly weighted average actual BTU/lb. varies by more than 200 Btu/lb. above or below the monthly weighted guarantee Btu/lb then the Contract Price will be adjusted as follows:

\$/ton: (Monthly Weighted Average Actual Btu/lb – Monthly Weighted Average Guaranteed Btu/lb) x Contract Price / Monthly Weighted Average Guaranteed Btu/lb.

SO₂ (Check One): N/A
 SO₂ penalty adjustment for scrubber coal (\$/ton):

SO₂ penalty adjustment for scrubber coal (\$/ton):

If the Monthly Weighted Average Actual lbs SO₂/mmbtu exceeds the Monthly Weighted Average Guaranteed lbs SO₂/mmbtu for Coal shipped and unloaded by Buyer in any calendar month, the SO₂ Adjustment for all Coal unloaded during the month is equal to:

\$/ton = (Monthly Weighted Average Guaranteed lbs SO₂/mmbtu - Monthly Weighted Average Actual lbs. SO₂/mmbtu) x Monthly Weighted Average Actual Btu/lb) x ((E x .10) + \$85) / 1,000,000

Where: E is defined for any given delivery month as the 3 day average SO₂ Price of allowances expressed in dollars per ton of SO₂ in the table entitled "Daily Market Assessments, SO₂ Allowances, Price for current vintage year" published in Energy Argus Air Daily, or its successor publication, for such calendar month of delivery as published on the 3rd, 4th and 5th business days of the subsequent month (e.g., spot SO₂ price (E) for allowances for January 2005 coal shipments would be calculated by using an average of the indices published in Energy Argus Air Daily on February 3, 4, and 7.) In the event the market pricing published by Energy Argus Air Daily ceases to exist, an acceptable source of market pricing shall be mutually agreed.

Ash (Check One): N/A
 Ash Penalty Adjustment (\$/ton):

If the Monthly Weighted Average Actual Ash % exceeds 13%, the Ash Penalty Adjustment is equal to:

\$/ton = (Monthly Weighted Average Actual Ash % - 13 %) x \$0.35

12). Weight Determination: The weight of each barge Shipment shall be determined by draft survey at barge loading as performed by an independent draft surveyor appointed by the Seller with the costs for Seller's account. The weight of each train or truck shipment shall be weighed

at Seller's expense by means of a certified batch weighing system or certified track or truck scale or in the absence of a batch weighing system or track scales for rail weights, official railroad weights. Such weights shall be final and binding and shall govern for payment.

13). Loading Terms: Seller agrees to load a minimum of 1,500 tons into each open hopper rake jumbo barge and a minimum of 1,700 tons into each open hopper box jumbo barge. If Seller fails to load the barges to meet these minimums, the difference between the minimum tonnage and the actual tonnage times the barge rate (\$/ton) to Buyer's destination will be withheld from payments. Seller agrees to ensure that coal is available and that the loading dock has the capacity to load barges within 72 hours of placement. Failure to load barges within 72 hours may result in demurrage charges to the Seller. Buyer may withhold demurrage charges from final payment.

General Terms and Conditions

14). Force Majeure: If a Party is delayed in or prevented from performing, in whole or in part, any of its obligations due to acts of God, war, riots, civil insurrection, acts of the public enemy, strikes, lockouts, natural disasters, or other causes that are beyond the reasonable control and without the fault or negligence of the Party affected thereby (such events being referred to herein as "Force Majeure"), and such Party gives oral notice and full details of the Force Majeure to the other Party as soon as reasonably practicable after the occurrence of the event of Force Majeure (such notice to be confirmed in writing), then during the pendency of such Force Majeure but for no longer period, the obligations of the Parties (other than obligations to make payments then due) shall be suspended to the extent required by the event. The Party affected by the Force Majeure shall remedy the Force Majeure with all reasonable dispatch and will keep the other Party advised as to the continuance of the Force Majeure event; provided however, that this provision shall not require Seller to deliver, or Buyer to receive, the Coal at points other than the Delivery Point for the authorized Source including allowable substitutions under the Agreement. A change in market conditions including the ability of Seller to sell Coal at a higher price, or Buyer or Buyer's customer to buy Coal at a lower price, whether or not foreseeable shall not be considered a Force Majeure event. If an event of complete or partial Force Majeure persists for a continuous period of sixty (60) days, then the Party not claiming Force Majeure shall have the option, upon three (3) days' prior written notice, to terminate this Agreement to the extent affected and the associated obligations of the Parties (other than payment obligations for prior performance thereunder). In the event of a Force Majeure, delivery of the affected Quantity of Coal shall not be made up except by mutual agreement of the Buyer and Seller. If Seller claims Force Majeure and is unable to meet all of its sales obligations under this Agreement and any other of its Coal sales agreements involving Coal of a similar type and quality as the Coal, or if Buyer claims Force Majeure and is unable to meet all of its purchase obligations under this Agreement and any other of its Coal purchase agreements involving Coal of a similar type and quality as the Coal, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated on a pro rata basis among the affected transaction(s) and such other Coal supply or purchase agreements involving Coal of the same type and quality as the Coal, to the extent contractually permitted by such Agreements.

15). Damages:

(a) Unless excused by Force Majeure or the Buyer's failure to perform, if Seller fails to deliver all or part of the Quantity of the Coal to be delivered hereunder pursuant to the Delivery Schedule, Seller shall pay to the Buyer for each ton of deficiency (the "Deficiency") an amount equal to the positive difference, if any, obtained by subtracting the Contract Price for the

Deficiency from the Replacement Price. "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases substitute Coal for the Deficiency (plus additional transportation charges, if any, incurred by Buyer as a result of taking delivery of substitute Coal at a location other than the Delivery Point) or, absent such a purchase, the market price for such Quantity of Coal FOB the Delivery Point, as determined by Buyer in a commercially reasonable manner. It is expressly agreed that Buyer shall not be required to enter into a replacement transaction in order to determine the Replacement Price.

(b) Unless excused by Force Majeure or the Seller's failure to perform, if Buyer fails to accept all or part of the Quantity of the Coal to be delivered hereunder pursuant to the Delivery Schedule, Buyer shall pay to the Seller for each ton of deficiency (the "Deficiency") an amount equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price for the Deficiency. "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells (if at all) the Deficiency (plus additional transportation charges, if any, incurred by Seller as a result of delivering Coal to a location other than the Delivery Point) or, absent such resale, the market price for such Quantity of Coal FOB the Delivery Point, as determined by Seller in a commercially reasonable manner. It is expressly agreed that Seller shall not be required to enter into a replacement transaction in order to determine the Sales Price.

16). Payment: Buyer will self-invoice bi-monthly. Shipments unloaded during the first through the fifteenth of each month are payable 10 days after the end of the month at the Contract Price. Shipments unloaded during the sixteenth through the end of each month are payable, with quality adjustments for all Shipments unloaded during the month, 25 days after the end of each month. Shipments shall be unloaded in the normal course of business, without unreasonable delay by Buyer. Buyer shall pay, by electronic transfer in immediately available United States funds, the amount set forth on each invoice along with the necessary information enabling reconciliation to the relevant Shipment. All past due payments shall bear interest at the Interest Rate from and including the date due to but excluding the date paid.

Buyer Billing Contact:

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

Counterparty Billing Contact:

Attn:
Fax:

Counterparty Payment Address:

Bank Name:
Account Number:
ABA number:
Phone Number:

17). **Billing Dispute.** If Buyer, in good faith, disputes an invoice, Buyer shall no later than the time of payment of the invoice notify Seller of the basis for the dispute and pay the portion of such statement not in dispute no later than the due date. If any amount withheld under dispute by Buyer is ultimately determined to be due to Seller, it shall be paid within one (1) Business Day after such determination, along with interest accrued at the Interest Rate from the original due date until the date paid. Inadvertent overpayments shall be returned by Seller upon request or deducted by Seller from subsequent payments, with interest accrued at the Interest Rate from the date originally paid until the date repaid or deducted. Interest Rate means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H.15; or (b) the maximum lawful interest rate.

18). **Bankruptcy:** In the event either party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), or (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, (collectively, "Bankruptcy Proceedings"), then the other party may, at its option and in its sole discretion anytime thereafter upon written notice, terminate this agreement in whole or in part.

19). **Material Adverse Change:** A Material Adverse Change occurs with respect to either Party or either Party's credit support provider if one exists, if (i) there is any material change in the condition (financial or otherwise), net worth, assets, properties or operations, or in economic conditions, which, taken as a whole, can reasonably be anticipated to impair the ability of such Party or such Party's credit support provider to fulfill its obligations; or (ii) there is reasonable grounds to believe that the creditworthiness of such Party has become unsatisfactory or its ability to perform under this Agreement has been materially impaired.

20). **Adequate Assurances:** If a Material Adverse Change has occurred, the Party seeking assurance ("Requesting Party") may make a written request of the other Party ("Providing Party") to provide Adequate Assurance in an amount determined in a commercially reasonable manner, and in a form acceptable to the Requesting Party. Upon receipt of the request, the Providing Party shall have one (1) Business Day to provide such Adequate Assurances. If not provided, the Requesting Party will be entitled to the remedies set forth below. If the Providing Party provides Adequate Assurance to the Requesting Party within one (1) Business Day, it is understood that the Providing Party shall not in fact have defaulted under this Agreement by incurring a Material Adverse Change. Adequate Assurance is defined as (i) cash (ii) letters of credit, or (iii) such other form of security acceptable to the Requesting Party.

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

21). **Event of Default:** An Event of Default ("Event of Default") with respect to a Party (the "Defaulting Party") shall mean: (i) the failure of the Defaulting Party to pay when due any required payment and such failure is not remedied within three (3) Business Days after written notice; (ii) the failure of the Defaulting Party to comply with its other material obligations under this Agreement and such failure is not remedied within three (3) Business Days after written notice; (iii) a Party or its credit support provider is subject to a Bankruptcy Proceeding; or (iv) a Party suffers a Material Adverse Change and fails to provide Adequate Assurances.

22). **Early Termination:** Upon the occurrence and during the continuance of an Event of Default, as to the Defaulting Party, the other Party (the "Non-Defaulting Party") may, in its sole discretion: (a) accelerate and liquidate the Parties' respective obligations by establishing and notifying the Defaulting Party of an early termination date (which shall be no earlier than the date such written notice is received and no later than twenty (20) days after the date of such notice) on which this and any other Coal Agreement shall terminate ("Early Termination Date"); and/or (b) withhold any payments due to the Defaulting Party until such Event of Default is cured; and/or (c) suspend performance of its obligations until such Event of Default is cured.

23). **Early Termination Payment:** If an Early Termination Date is established, the Non-Defaulting Party shall in good faith calculate its Gains (Gains means an amount equal to the present value of the economic benefit, if any, exclusive of Costs, to it resulting from the termination of its obligations with respect to a terminated Agreement, determined in a commercially reasonable manner) or Losses (Losses means an amount equal to the present value of the economic loss, if any, exclusive of Costs to it resulting from the termination of its obligations with respect to a terminated Agreement, determined in a commercially reasonable manner), and Costs (Costs means any brokerage fees, commissions and other transactional costs and expenses reasonably incurred either by the Non-Defaulting Party as a result of terminating any hedges or other risk management contracts and/or entering into new arrangements in order to replace the early terminated Agreement(s), and Legal Costs incurred by the Non-Defaulting Party), resulting from the termination of this and any other Coal Agreement between the parties, aggregate such Gains or Losses, and Costs, and then notify the Defaulting Party of the net amount owed or owing. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within two (2) Business Days of its receipt of such notice pay the net amount to the Non-Defaulting Party, including interest from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from such early termination, the Non-Defaulting Party shall pay the net amount to the Defaulting Party in accordance with Paragraph 18 hereof. The Non-Defaulting Party shall determine its gains or losses, and costs, as of the Early Termination Date, or, if that is not possible, at the earliest date thereafter that is reasonably possible. If an Event of Default occurs, the Non-Defaulting Party may (at its election) set off any or all amounts that the Defaulting Party owes to the Non-Defaulting Party under this and any other agreement between the Parties.

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

payments under this Agreement and/or any other agreement between the Parties may be offset against each other, set off or recouped therefrom.

25). **Limitation of Liability:** No waiver of remedies or damages herein shall apply to claims of anticipatory repudiation or remedies thereof provided for by law except that neither Seller nor Buyer shall be liable to the other for consequential, incidental, punitive, exemplary, special or indirect damages, lost profits, or business interruption damages, whether in equity or by statute, in tort, or in contract, under any indemnity provision or otherwise.

26). **Insurance:** Seller shall maintain, or cause to be procured and maintained, Statutory Longshore and Harbor Workers' Compensation Act Insurance or Statutory State Workers' Compensation Insurance or Jones Act (Maritime Employers Liability), whichever is applicable, covering Seller's responsibilities with respect to all workers at the docks and fleets at all Origins utilized by Seller, and Comprehensive Marine Liability insurance (in any combination of primary and excess coverage), including but not limited to Protection and Indemnity Liability, Jones Act (Maritime Employers Liability), Pollution Liability, Full Collision Liability, Marine Operators Liability, Marine Contractual Liability, Wharfinger Liability, Towers' Liability, Hull and Cargo Legal Liability and Cost of Removal of Wreck and Cargo (including voluntary or statutory), where applicable, covering the docks and fleets at all Origins utilized by Seller in an amount not less than \$10,000,000 per occurrence.

27). **Title/ Risk of Loss:** Seller warrants good title to all Coal delivered hereunder, free and clear of all claims and encumbrance. Title and risk of loss shall pass to the Buyer upon delivery at the Delivery Point.

28). **Assignment:** Neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

29). **Entire Agreement:** This Agreement is the final and entire agreement between the parties. No modification or amendment of this agreement shall be effective or binding unless set forth in writing signed by both parties.

30). **No Waiver:** Waiver of any breach of the Agreement shall not be construed as a waiver of any other breach.

31). **Governing Law:** This Agreement shall be construed in accordance with and governed by the laws of the State of New York, including without limitation the Uniform Commercial Code, without giving effect to the doctrine of conflict of laws.

32). **Confidentiality:** Each party hereby acknowledges that this Agreement contains confidential information that may place such a party at a competitive disadvantage if disclosed to the public. Therefore, the terms of this Agreement shall be preserved as confidential by the parties, except to the extent disclosure may be required by law, regulation or judicial administrative order, and the parties shall employ reasonable means to effectuate such confidentiality. However, disclosure of information is permitted to a Party's affiliates, directors, employees, regulators, counsel, auditors, agents, or partners in ownership of a generation facility, provided that it is necessary to show the information to such individuals or entities due to their relationship with the Party and such individuals and entities are informed of the confidential nature of the information.

33). Notices: Notices under this Agreement shall be given in writing and shall be effective when received.

34). Limitation on warranty: Except as expressly set forth herein, seller expressly disclaims any other representations or warranties, written or oral, express or implied, including merchantability, or fitness for any particular purpose.

35). Recording: Each Party hereby consents to recording of conversations without any further notice.

36). The Parties agree to work toward finalizing a Master Coal Agreement.

37). Forward Contract: The Parties agree that this Agreement constitutes a "forward contract" and that the Parties shall be "forward contract merchants" within the meaning of the United States Bankruptcy Code.

38). Dispute Resolution

A. Procedure. If a dispute arises between the Parties relating to this Agreement, the Parties agree to use the following procedure prior to either Party pursuing other available remedies:

- (i) A meeting shall be held promptly between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.
- (ii) If within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, the dispute shall be submitted to binding arbitration.

B. Arbitration. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of New York shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) calendar days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by Buyer and one shall be selected by Counterparty. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) calendar days, then either party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the parties. The

arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) calendar days after the date of the selection of the arbitrator(s) or within such period as the parties may otherwise agree. Each party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article. Both parties agrees that in the event of any dispute between the parties, it will continue to provide products or services without interruption.

39). On the Effective Date hereof, each Party represents and warrants to the other that:

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

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

(c) It, or its affiliates, have, or will diligently pursue, any and all necessary governmental and other third party permits, approvals and licenses required in connection with the execution, delivery and performance of this Agreement;

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

(e) There are no known suits, proceedings, judgments rulings or orders by or before any court or any governmental authority that materially adversely affect its ability to perform its obligations under this Agreement;

(f) It is a "forward contract merchant" within the meaning of the United States Bankruptcy Code; and

(g) With respect to this Agreement, it, or its affiliates, are a producer, processor, commercial user or merchant handling Coal, and it is entering into such Agreement for purposes related to its business as such.

THE PARTIES, BY THEIR AUTHORIZED AGENTS, HEREBY EXECUTE THIS COAL SUPPLY AGREEMENT.

The Union Light, Heat and Power Company

BY: VE [Signature]

TITLE: Vice President

DATE: 1/13/06

BY: _____

TITLE: _____

DATE: 1-9-06

BY: _____

TITLE: _____

Date: Jan. 10, 2006

10). Quality Adjustments:

Btu (Check One): N/A
 Btu price adjustment (\$/ton):

If the monthly weighted average actual BTU/lb. is within +/- 200 Btu/lb. of the monthly weighted average guarantee Btu/lb then no adjustment will be made. If the monthly weighted average actual BTU/lb. varies by more than 200 Btu/lb. above or below the monthly weighted guarantee Btu/lb then the Contract Price will be adjusted as follows:

\$/ton: (Monthly Weighted Average Actual Btu/lb – Monthly Weighted Average Guaranteed Btu/lb) x Contract Price / Monthly Weighted Average Guaranteed Btu/lb.

SO₂ (Check One): N/A
 SO₂ penalty adjustment for scrubber coal (\$/ton):

SO₂ penalty adjustment for scrubber coal (\$/ton):

If the Monthly Weighted Average Actual lbs SO₂/mmbtu exceeds the Monthly Weighted Average Guaranteed lbs SO₂/mmbtu for Coal shipped and unloaded by Buyer in any calendar month, the SO₂ Adjustment for all Coal unloaded during the month is equal to:

\$/ton = (Monthly Weighted Average Guaranteed lbs SO₂/mmbtu - Monthly Weighted Average Actual lbs. SO₂/mmbtu) x Monthly Weighted Average Actual Btu/lb) x ((E x .10) + \$85) / 1,000,000

Where: E is defined for any given delivery month as the 3 day average SO₂ Price of allowances expressed in dollars per ton of SO₂ in the table entitled "Daily Market Assessments, SO₂ Allowances, Price for current vintage year" published in Energy Argus Air Daily, or its successor publication, for such calendar month of delivery as published on the 3rd, 4th and 5th business days of the subsequent month (e.g., spot SO₂ price (E) for allowances for January 2005 coal shipments would be calculated by using an average of the indices published in Energy Argus Air Daily on February 3, 4, and 7.) In the event the market pricing published by Energy Argus Air Daily ceases to exist, an acceptable source of market pricing shall be mutually agreed.

Ash (Check One): N/A
 Ash Penalty Adjustment (\$/ton):

If the Monthly Weighted Average Actual Ash % exceeds 13%, the Ash Penalty Adjustment is equal to:

\$/ton = (Monthly Weighted Average Actual Ash % - 13 %) x \$0.35

Price adjustments shall be made to the nearest \$0.001 and calculated on a half-month weighted average.

11). Weight Determination: The weight of each barge Shipment shall be determined by draft survey at barge loading as performed by an independent draft surveyor upon

mutual agreement between Buyer and Seller with the costs from Seller's account. The weight of each train or truck shipment shall be weighed at Seller's expense by means of a certified batch weighing system or certified track or truck scale or in the absence of a batch weighing system or track scales for rail weights, official railroad weights. Such analysis shall be final and binding and shall govern for payment.

12). Loading Terms: Seller agrees to load a minimum of 1,500 tons into each open hopper rake jumbo barge and a minimum of 1,700 tons into each open hopper box jumbo barge. If Seller fails to load the barges to meet these minimums, the difference between the minimum tonnage and the actual tonnage times the barge rate (\$/ton) to Buyer's destination will be withheld from payments. Seller agrees to ensure that coal is available and that the loading dock has the capacity to load barges within 72 hours of placement. Failure to load barges within 72 hours may result in demurrage charges to the Seller. Buyer may withhold demurrage charges from final payment.

General Terms and Conditions

13). Force Majeure: If a Party is delayed in or prevented from performing, in whole or in part, any of its obligations due to acts of God, war, riots, civil insurrection, acts of the public enemy, strikes, lockouts, natural disasters, or other causes that are beyond the reasonable control and without the fault or negligence of the Party affected thereby (such events being referred to herein as "Force Majeure"), and such Party gives oral notice and full details of the Force Majeure to the other Party within two (2) business days of occurrence of the event of Force Majeure (such notice to be confirmed in writing), then during the pendency of such Force Majeure but for no longer period, the obligations of the Parties (other than obligations to make payments then due) shall be suspended to the extent required by the event. The Party affected by the Force Majeure shall remedy the Force Majeure with all reasonable dispatch and will keep the other Party advised as to the continuance of the Force Majeure event; provided however, that this provision shall not require Seller to deliver, or Buyer to receive, the Coal at points other than the Delivery Point for the authorized Source including allowable substitutions under the Transaction. A change in market conditions including the ability of Seller to sell Coal at a higher price, or Buyer or Buyer's customer to buy Coal at a lower price, whether or not foreseeable shall not be considered a Force Majeure event. If an event of complete or partial Force Majeure persists for a continuous period of sixty (60) days, then the Party not claiming Force Majeure shall have the option, upon three (3) days' prior written notice, to terminate this transaction to the extent affected and the associated obligations of the Parties (other than payment obligations for prior performance thereunder). In the event of a Force Majeure, delivery of the affected Quantity of Coal shall not be made up except by mutual agreement of the Buyer and Seller. If Seller claims Force Majeure and is unable to meet all of its sales obligations under this Agreement and any other of its Coal sales agreements involving Coal of a similar type and quality as the Coal, or if Buyer claims Force Majeure and is unable to meet all of its purchase obligations under this Agreement and any other of its Coal purchase agreements involving Coal of a similar type and quality as the Coal, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated on a pro rata basis among the affected transaction(s) and such other Coal supply or purchase agreements involving Coal of the same type and quality as the Coal, to the extent contractually permitted by such Transaction and agreements.

14). Payment: Buyer will self-invoice bi-monthly. Shipments unloaded during the first through the fifteenth of each month are payable 10 days after the end of the month at the Contract

Price. Shipments unloaded during the sixteenth through the end of each month are payable, with quality adjustments for all Shipments unloaded during the month, 25 days after the end of each month. Shipments shall be unloaded in the normal course of business, without unreasonable delay by Buyer. Buyer shall pay, by electronic transfer in immediately available United States funds, the amount set forth on each invoice along with the necessary information enabling reconciliation to the relevant Shipment to the applicable payment address below:

Buyer Billing Contact:

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

Counterparty Billing Contact:

Attn: ?
Fax:

Counterparty Payment Address

Bank Name:
Account Number:
ABA number:
Phone Number:

Buyer hereby represents and warrants to Seller that pursuant to the Synfuel Sales Agreement, ULH&P is obligated to make all payments to Buyer under such agreement to Buyer's depository account at (the "Bank"), Account No. (the "Account"). Buyer hereby covenants that it will not modify such provisions of the Synfuel Sales Agreement without Seller's prior written consent. Buyer hereby grants to Seller a security interest in and to the Account. Bank, Buyer and CG&E, in its capacity as Agent for Seller and all of the other suppliers, has entered into a Control Agreement in the form attached hereto as Exhibit A pursuant to which Seller's security interest in and to the Account is perfected. CG&E has assigned its interest in the Control Agreement to ULH&P effective January 1, 2006. Seller hereby appoints ULH&P as its agent for purposes of controlling the Account. ULH&P has accepted such appointment and agreed that it shall make payments from the Account to Seller pursuant to the invoices submitted by Seller to Buyer on the 10th and 25th business day of each calendar month, or if the Bank shall be closed on such date, the next day that the Bank is open. On each payment date, the security interest of Seller shall be *pari passu* with the security interests of all other suppliers of coal to Buyer (the "Other Suppliers"), and if the funds in the Account are not sufficient to pay the amounts payable to each of the Other Suppliers in full, then Agent shall make payment pro rata to Seller and the Other Suppliers.

15). **Billing Dispute.** If Buyer, in good faith, disputes an invoice, Buyer shall no later than the time of payment of the invoice notify Seller of the basis for the dispute and pay the portion of such statement not in dispute no later than the due date. If any amount withheld under dispute by Buyer is ultimately determined to be due to Seller, it shall be paid within one (1) Business Day after such determination, along with interest accrued at the Interest Rate from the original due date until the date paid. Inadvertent overpayments shall be returned by Seller upon request or

deducted by Seller from subsequent payments, with interest accrued at the Interest Rate from the date originally paid until the date repaid or deducted. Interest Rate means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H.15; or (b) the maximum lawful interest rate.

16) **Bankruptcy:** In the event either party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), or (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, (collectively, "Bankruptcy Proceedings"), then the other party may, at its option and in its sole discretion anytime thereafter upon written notice, terminate this agreement in whole or in part.

17). **Material Adverse Change:** A Material Adverse Change occurs with respect to either Party or either Party's credit support provider if one exists, if (i) there is any material change in the condition (financial or otherwise), net worth, assets, properties or operations, or in economic conditions, which, taken as a whole, can reasonably be anticipated to impair the ability of such Party or such Party's credit support provider to fulfill its obligations; or (ii) there is reasonable grounds to believe that the creditworthiness of such Party has become unsatisfactory or its ability to perform under this Agreement has been materially impaired.

18). **Adequate Assurances:** If a Material Adverse Change has occurred, the Party seeking assurance ("Requesting Party") may make a written request of the other Party ("Providing Party") to provide Adequate Assurance in an amount determined in a commercially reasonable manner, and in a form acceptable to the Requesting Party. Upon receipt of the request, the Providing Party shall have one (1) Business Day to provide such Adequate Assurances. If not provided, the Requesting Party will be entitled to the remedies set forth below. If the Providing Party provides Adequate Assurance to the Requesting Party within one (1) Business Day, it is understood that the Providing Party shall not in fact have defaulted under this Agreement by incurring a Material Adverse Change. Adequate Assurance is defined as (i) cash (ii) letters of credit, or (iii) such other form of security acceptable to the Requesting Party.

19). **Event of Default:** An Event of Default ("Event of Default") with respect to a Party (the "Defaulting Party") shall mean: (i) the failure of the Defaulting Party to pay when due any required payment and such failure is not remedied within three (3) Business Days after written notice; (ii) the failure of the Defaulting Party to comply with its other material obligations under this Agreement and such failure is not remedied within three (3) Business Days after written notice; (iii) a Party or its credit support provider is subject to a Bankruptcy Proceeding; or (iv) a Party suffers a Material Adverse Change and fails to provide Adequate Assurances.

20). **Early Termination:** Upon the occurrence and during the continuance of an Event of Default, as to the Defaulting Party, the other Party (the "Non-Defaulting Party") may, in its sole discretion: (a) accelerate and liquidate the Parties' respective obligations by establishing and notifying the Defaulting Party of an early termination date (which shall be no earlier than the date such written notice is received and no later than twenty (20) days after the date of such notice) on which this and any other Coal Agreement shall terminate ("Early Termination Date"); and/or (b) withhold any payments due to the Defaulting Party until such Event of Default is cured; and/or (c) suspend performance of its obligations until such Event of Default is cured.

21). **Early Termination Payment:** If an Early Termination Date is established, the Non-Defaulting Party shall in good faith calculate its Gains (Gains means an amount equal to the present value of the economic benefit, if any, exclusive of Costs, to it resulting from the termination of its obligations with respect to a terminated Transaction, determined in a commercially reasonable manner) or Losses (Losses means an amount equal to the present value of the economic loss, if any, exclusive of Costs to it resulting from the termination of its obligations with respect to a terminated Transaction, determined in a commercially reasonable manner), and Costs (Costs means any brokerage fees, commissions and other transactional costs and expenses reasonably incurred either by the Non-Defaulting Party as a result of terminating any hedges or other risk management contracts and/or entering into new arrangements in order to replace the early terminated Transaction(s), and Legal Costs incurred by the Non-Defaulting Party), resulting from the termination of this and any other Coal Agreement between the parties, aggregate such Gains or Losses, and Costs, and then notify the Defaulting Party of the net amount owed or owing. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within two (2) Business Days of its receipt of such notice pay the net amount to the Non-Defaulting Party, including interest from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from such early termination, the Non-Defaulting Party shall pay the net amount to the Defaulting Party in accordance with Paragraph 18 hereof. The Non-Defaulting Party shall determine its gains or losses, and costs, as of the Early Termination Date, or, if that is not possible, at the earliest date thereafter that is reasonably possible. If an Event of Default occurs, the Non-Defaulting Party may (at its election) set off any or all amounts that the Defaulting Party owes to the Non-Defaulting Party under this and any other agreement between the Parties.

21). **Netting:** If the Parties are required to pay any amount on the same day or in the same month under this or any other Coal Agreement, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount may pay to the other Party the difference between the amounts owed.

23). **Limitation of Liability:** No waiver of remedies or damages herein shall apply to claims of anticipatory repudiation or remedies thereof provided for by law except that neither Seller nor Buyer shall be liable to the other for consequential, incidental, punitive, exemplary, special or indirect damages, lost profits, or business interruption damages, whether in equity or by statute, in tort, or in contract, under any indemnity provision or otherwise.

24). **Title/ Risk of Loss:** Seller warrants good title to all Coal delivered hereunder, free and clear of all claims and encumbrance. Title and risk of loss shall pass to the Buyer upon delivery at the Delivery Point.

25). **Assignment:** Neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

26). **Entire Agreement:** This Agreement is the final and entire agreement between the parties. No modification or amendment of this agreement shall be effective or binding unless set forth in writing signed by both parties.

27). **No Waiver:** Waiver of any breach of the Agreement shall not be construed as a waiver of any other breach.

- 28). **Governing Law:** This Agreement shall be construed in accordance with and governed by the laws of the State of New York, including without limitation the Uniform Commercial Code, without giving effect to the doctrine of conflict of laws.
- 29). **Confidentiality:** Each party hereby acknowledges that this Agreement contains confidential information that may place such a party at a competitive disadvantage if disclosed to the public. Therefore, the terms of this Agreement shall be preserved as confidential by the parties, except to the extent disclosure may be required by law, regulation or judicial administrative order, and the parties shall employ reasonable means to effectuate such confidentiality.
- 30). **Notices:** Notices under this Agreement shall be given in writing and shall be effective when received.
- 31). **Limitation on warranty:** Except as expressly set forth herein, seller expressly disclaims any other representations or warranties, written or oral, express or implied, including merchantability, or fitness for any particular purpose.
- 32). **Recording:** Each Party hereby consents to recording of conversations without any further notice.
- 33). The Parties agree to work toward finalizing a Master Coal Agreement.
- 34). **Forward Contract:** The Parties agree that this Transaction constitutes a "forward contract" and that the Parties shall be "forward contract merchants" within the meaning of the United States Bankruptcy Code.
- 35). **Buyer's Consultant:** Pursuant to the Coal Consulting and Transportation Agreement by and between The Cincinnati Gas & Electric Company and Tyrone Synfuels, L.P. dated March 11, 2004, as assigned to ULH&P, Buyer has retained ULH&P as its consultant for purposes of entering into purchases pursuant to this Agreement, exercising any of Buyer's options to purchase coal, scheduling deliveries under the Agreement, and generally administering day-to-day activities under this Agreement on behalf of Buyer. Seller shall be entitled to rely on purchases executed by ULH&P and instructions from ULH&P with respect to the exercise of Buyer's options pursuant to the Agreement, scheduling deliveries of coal, and other matters in connection with the day-to-day administration of this Agreement as being binding on Buyer.
- 36). **Dispute Resolution**
- A. **Procedure.** If a dispute arises between the Parties relating to this Agreement, the Parties agree to use the following procedure prior to either Party pursuing other available remedies:
- (i) A meeting shall be held promptly between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.
- (ii) If within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, either Party may with written notice require the other Party to arbitrate such dispute.

(iii) If, within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, then, upon written notice to the other Party, either Party may request that the matter be referred to binding arbitration before three arbitrators, one of whom shall be named by Buyer, one by Seller, and a third of whom shall be named by the two arbitrators appointed by Buyer and Seller, respectively. If either Seller or Buyer fails to select an arbitrator within fifteen (15) days after receipt of written notice from the other of its election to submit a matter to arbitration and naming its arbitrator, the Party giving such notice shall have the right to appoint an arbitrator for the Party in default; and the two thus chosen shall then select the third arbitrator. The appointment of the third arbitrator, if not agreed upon within twenty (20) days, shall be made in accordance with CPR's Rules for Non-administered Arbitration then in effect (the "Rules"). The Rules shall govern any such proceedings. Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Each Party shall pay for the services and expenses of the arbitrator appointed by it and for its costs, expenses, and attorneys' fees. Fees and expenses of the third arbitrator and court reporter shall be paid in equal parts by the Parties hereto.

- B. Proceedings. All negotiation and arbitration proceedings shall be strictly confidential and used solely for the purposes of settlement. Any materials prepared by one Party for those proceedings shall not be used as evidence by the other Party in any subsequent arbitration or legal proceeding. All arbitration proceedings shall also be strictly confidential.
- C. Clarity of Obligations. Each Party fully understands its specific obligations under the provisions of this Section. Neither Party considers such obligations to be in any way unenforceable, and neither Party will contend to the contrary at any future time or in any future proceeding.

37). On the Effective Date hereof, each Party represents and warrants to the other that:

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

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

(c) It, or its affiliates, have, or will diligently pursue, any and all necessary governmental and other third party permits, approvals and licenses required in connection with the execution, delivery and performance of this Agreement;

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

(c) There are no known suits, proceedings, judgments rulings or orders by or before any court or any governmental authority that materially adversely affect its ability to perform its obligations under this Agreement;

(f) It is a "forward contract merchant" within the meaning of the United States Bankruptcy Code; and

(g) With respect to this Agreement, it, or its affiliates, are a producer, processor, commercial user or merchant handling Coal, and it is entering into such Agreement for purposes related to its business as such.

THE PARTIES, BY THEIR AUTHORIZED AGENTS, HEREBY EXECUTE THIS COAL SUPPLY AGREEMENT WHICH SHALL BE EFFECTIVE ON THE DATE FIRST ABOVE WRITTEN. FAILURE TO OBJECT WITHIN THREE (3) BUSINESS DAYS OF RECEIPT OF THIS AGREEMENT SHALL CONSTITUTE ACCEPTANCE.

TYRONE SYNFUELS LP

BY: *Clad [Signature]*
 President & CEO
TITLE: *CO Infr. General Partner*
DATE: *1-13-06*

BY: _____
TITLE: _____
DATE: *1-9-06*

BY: _____
TITLE: _____
DATE: *Jan 10, 2006*

**Schedule 1
Standard to Confirmation: Specifications**

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

<u>Specification</u>	<u>Shipment Typical Quality (Barge/ Unit Train)</u>	<u>Shipment Rejection Limits (Barge / Unit Train)</u>
BTU/LB.	11,750	< 11,400
MOISTURE	8.00%	> 10.0%
ASH	12.0%	> 14.0%
SULFUR DIOXIDE (SO ₂)	6.50 lb/MMBTU	> 6.75 lb/MMBTU
VOLATILE	30%	< 28%
Size (2" x 0"):		
- Top size (inches)	< 2"	> 3"
- Fines (% by wgt)		
Passing 1/4" screen	< 40%	> 50%
GRINDABILITY (HGI)	50	< 45
<u>ASH FUSION TEMPERATURE (°F) (ASTM D1857)</u>		
<u>REDUCING ATMOSPHERE</u>		
Softening (H=W)	2,200 °F	min. 2,100 °F
Hemispherical (H=1/2W)	_____	min. _____
Fluid	_____	min. _____

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

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

**FIRST AMENDMENT TO THE
COAL SUPPLY AGREEMENT**

This **FIRST AMENDMENT TO THE COAL SUPPLY AGREEMENT** ("First Amendment") is made and entered into this 3rd day of February, 2006, by and between Ohio Corporation and Tyrone Synfuels, L.P., a Delaware limited partnership ("TSLP").² an

WITNESSETH:

WHEREAS, the parties entered into a Coal Supply Agreement dated September 2, 2004 ("Coal Supply Agreement"); and

WHEREAS, the parties wish to amend the Coal Supply Agreement as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants of the parties hereto, the parties agree as follows:

1. **AMENDMENTS.** The Coal Supply Agreement is amended as follows:
 - a. The following amendments shall be effective with the November, 2005 recap:
 - i. Section 1 – Term of Agreement and Quantity of Coal to be Sold will be amended by extending the term through March 31, 2006.
 - ii. Section 7 – Coal Quality will be amended by reducing the monthly weighted average guarantee for ash from 15.00% to 14.00%.
 - iii. Section 11 – Price Adjustment for Sulfur Content shall be deleted in its entirety and replaced with the following:

"Section 11 – Price Adjustment for SO₂ Content:

If the Monthly Weighted Average Actual lbs SO₂/MMBtu exceeds 5.678 lbs so₂/mmbtu for Coal unloaded by Buyer in any calendar month, the SO₂ Adjustment for all Coal unloaded during the month is equal to:

$\$/\text{ton} = (5.678 - \text{Monthly Weighted Average Actual lbs. SO}_2/\text{mmbtu}) \times \text{Monthly Weighted Average Actual Btu/lb} \times ((\text{Spot price of SO}_2 \text{ Emission Allowances} \times .10) + \$85) / 1,000,000$

Spot price of SO₂ Emission Allowances for any given delivery month means Evolution Market's SO₂ Index Mid-way between the bid and ask price for the most current month."

- iv. Section 12 – Price Adjustment for Ash Content shall be deleted in its entirety and replaced with:

"If the weighted average percent ash by weight (as received) of the coal unloaded during any calendar month is greater than 14.00%, the price per ton for all coal unloaded during the month shall be reduced by \$0.07 for each 1/10th percent (.1%) of ash in excess of 14.00%."

- b. The following amendments shall be effective on and after January 1, 2006:
- i. Section 1 is amended by adding prior to the last period of the section the phrase, "as assigned to and assumed by The Union Light, Heat and Power Company ('ULH&P')";
 - ii. Section 2 is amended by replacing the reference to "The Cincinnati Gas & Electric Company's" in line three with "ULH&P's";
 - iii. Section 8, Paragraph 2: is amended by adding after the phrase, "The Cincinnati Gas & Electric Company ('CG&E')" the phrase, "as assigned to and assumed by ULH&P";
 - iv. Section 8, Paragraph 2: is amended by replacing the reference to "CG&E" in line 8 with "ULH&P".
 - v. Section 8, Paragraph 2: is amended by replacing the references to "CG&E" in lines 12 and 13 with "ULH&P".
 - vi. Section 18: is amended by replacing the reference to and "The Cincinnati Gas & Electric Company" with "The Union Light, Heat and Power Company";
 - vii. Section 19: is amended by replacing the references to "The Cincinnati Gas & Electric Company ('CG&E')" in line 5 with "ULH&P".
 - viii. Section 20: is amended by replacing the reference to "CG&E" in line 5 with "ULH&P".
 - ix. Section 26: is amended by replacing the references to "CG&E" in lines 2 and 6 with "ULH&P".

2. **ADDITIONAL DOCUMENTS.** All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this First Amendment.

3. **ENTIRE AGREEMENT AND SUCCESSORS IN INTEREST.** The Coal Supply Agreement and this First Amendment contains the entire agreement between the parties hereto with regard to the matters set forth therein and shall be binding upon and inure to the benefit of the successors and assigns of each.

4. **CAPITALIZED TERMS.** Any capitalized terms set forth herein that are not defined herein shall be given their meanings as set forth in the Coal Supply Agreement.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed as of the Effective Date set forth herein above.

Tyrone Synfuels, L.P.
By: CQ, Inc., its General Partner

By: _____
Title: _____
Date: 2-9-06

By: Charles Hansen
Title: President, CQ Inc, G.P.
Date: 2-7-06

By: _____
Title: _____
Date: 2-9-06

ASSIGNMENT AND ASSUMPTION AGREEMENT
WITH RESPECT TO
COAL SUPPLY AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT WITH RESPECT TO COAL SUPPLY AGREEMENT (this "Agreement") is entered into as of February 3rd, 2006 by and between The Cincinnati Gas & Electric Company, an Ohio corporation ("CG&E"), and The Union Light, Heat and Power Company, a Kentucky corporation ("ULH&P").

WHEREAS, CG&E is a party to a Coal Supply Agreement by and between CG&E and _____, ("Supplier") dated September 28, 2001 ("Coal Supply Agreement"); and

WHEREAS, CG&E and Supplier have entered into an Amended and Restated Coal Supply Agreement dated September 2, 2004 ("Amended and Restated Coal Supply Agreement", and

WHEREAS, CG&E intends to transfer to ULH&P CG&E's interest in Unit 2 of East Bend Generating Station ("East Bend Unit 2"); and

WHEREAS, CG&E desires to assign the Amended and Restated Coal Supply Agreement to ULH&P; and

WHEREAS, ULH&P desires to assume and take assignment of the Amended and Restated Coal Supply Agreement from CG&E.

NOW, THEREFORE, in consideration of the premises and the agreements and covenants herein contained, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I
ASSIGNMENT AND ASSUMPTION

Section 1.1 Assignment and Assumption. Effective January 1, 2006, (a) CG&E hereby unconditionally and irrevocably assigns, sells, transfers and conveys to ULH&P all of its right, title, interest, obligations and liabilities in, to and under the Amended and Restated Coal Supply Agreement, and (b) ULHP hereby unconditionally and irrevocably accepts such assignment and hereby unconditionally and irrevocably assumes and agrees to pay and otherwise undertake, observe, perform and discharge in accordance with their terms all of CG&E's obligations and liabilities under the Amended and Restated Coal Supply Agreement arising from and after the date of this Agreement.

ARTICLE II
MISCELLANEOUS

Section 2.1 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (including by facsimile) to the other party hereto.

Section 2.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, exclusive of any conflict of laws provisions thereof that would refer jurisdiction to the laws of another state.

Section 2.3 Entire Agreement; Parties in Interest. (a) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and there are no agreements, understandings, representations or warranties between the parties other than those set forth or referred to herein.

(b) This Agreement is not intended to confer upon any party not a party hereto (and their successors and assigns) any rights or remedies hereunder.

Section 2.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 2.5 Headings; Interpretation. The article and section headings contained in this Agreement are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Agreement. All references to Articles or Sections contained herein mean Articles or Sections of this Agreement, unless otherwise stated. All capitalized terms defined herein are equally applicable to both the singular and plural forms of such terms. The terms "hereof," "herein," "hereunder," "hereby" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all the exhibits hereto) and not to any particular provision of this Agreement. The words "including" and words of similar import when used in this Agreement shall mean "including without limitation" unless the context otherwise requires or unless otherwise specified.

Section 2.6 Amendments and Waivers. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by the party against whom enforcement of any such modification or amendment is sought. Any party hereto may, only by an instrument in writing, waive compliance by the other party hereto with any term or provision of this Agreement on the part of such other party to be performed or complied with. The waiver by any party hereto of a breach of any term of this Agreement shall not be construed as a waiver of any subsequent breach.

Section 2.7 Further Assurances. Subject to the terms and conditions of this Agreement, at any time or from time to time after the execution and delivery hereof, at

either party's request and without further consideration, the other party hereto shall execute and deliver to such requesting party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as such requesting party may reasonably request in order to effectuate more fully the purposes of this Agreement.

Section 2.8 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given (a) on the day when delivered personally or by facsimile transmission (with confirmation), (b) on the next business day when delivered by a nationally recognized overnight delivery service, or (c) five (5) business days after deposited as registered or certified mail (return receipt requested), in each case, postage prepaid, addressed to the recipient party at its address set forth below (or to such other addresses and facsimile numbers for a party as shall be specified by like notice; provided, however, that any notice of a change of address or facsimile number shall be effective only upon receipt thereof):

(i) If to CGE, to:

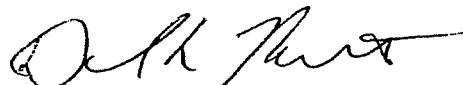
The Cincinnati Gas & Electric Company
139 East Fourth Street
Cincinnati, OH 45202
Attention: Vice President, Fuel Procurement and
Origination
Facsimile No.: 513-419-5690

(ii) If to ULHP, to:


The Union Light, Heat and Power Company
139 East Fourth Street
Cincinnati, OH 45202
Attention: Vice President, Fuel Procurement and
Origination
Facsimile No.: 513-419-5690

IN WITNESS WHEREOF, each of the parties hereto has caused this Assignment and Assumption Agreement with respect to Control Agreement to be executed on its behalf by its respective officer thereunto duly authorized, all as of the day and year first above written.

THE CINCINNATI GAS & ELECTRIC COMPANY

By: 
Name: Daniel L. Rinstidt
Title: VP Commercial Fuels
Date: 2-2-2006

THE UNION LIGHT, HEAT AND POWER COMPANY

By: 
Name: VE Stroud
Title: Vice President
Date: 2/3/06

**CONSENT
To
Assignment and Assumption Agreement
with respect to
Amended and Restated Coal Supply Agreement**

This CONSENT to Assignment and Assumption Agreement with respect to Amended and Restated Coal Supply Agreement (this "Consent") is executed and delivered by _____, an Ohio Corporation effective as of 12:01 a.m., Eastern Standard Time, January 1, 2006 (the "Effective Date").

WHEREAS, The Cincinnati Gas & Electric Company ("CG&E") is a party to an Amended and Restated Coal Supply Agreement by and between CG&E and _____ ("Supplier") dated September 2, 2004, as amended ("Amended and Restated Coal Supply Agreement"); and

WHEREAS, CG&E intends to transfer its interest in Unit 2 of East Bend Generating Station to its affiliate, The Union Light, Heat and Power Company ("ULH&P") effective January 1, 2006; and

WHEREAS, CG&E desires to assign the Amended and Restated Coal Supply Agreement to ULH&P effective January 1, 2006; and

WHEREAS, ULH&P desires to assume and take assignment of the Amended and Restated Coal Supply Agreement from CG&E.

WHEREAS, CG&E and ULH&P are executing and delivering that certain Amended and Restated Coal Supply Agreement, under which CG&E is assigning to ULH&P, and ULH&P is accepting and assuming, all of CG&E's rights and obligations under the Amended and Restated Coal Supply Agreement (collectively, the "Proposed Assignment");

WHEREAS, CG&E desires to be discharged and released from its obligations and liabilities from and after the Proposed Assignment; and

WHEREAS, Supplier has determined to execute and deliver this Consent to recognize the Proposed Assignment and to effect such discharge and release.

NOW, THEREFORE, by its signature below, in consideration of the transactions contemplated by the Amended and Restated Coal Supply Agreement, including without limitation the assumption by ULH&P of the obligations of CG&E under the Amended and Restated Coal Supply Agreement in accordance with its terms, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Supplier hereby:

1. grants its complete, unconditional and irrevocable consent to terms and provisions of the Assignment and Assumption Agreement, including without limitation the Proposed Assignment;
2. releases CG&E from all duties and liabilities that arise under the Amended and Restated Coal Supply Agreement from and after the Effective Date; and

Notwithstanding the foregoing, however, neither this Consent nor the Assignment and Assumption Agreement shall constitute a waiver of any claim against or the release of any liability of CG&E arising under the Amended and Restated Coal Supply Agreement prior to the Effective Date by Supplier.

This Consent shall inure to the benefit of CG&E and ULH&P and their respective successors and assigns and is binding upon Supplier and its respective successors and assigns.

No amendment or waiver of any provision hereof shall be effective unless in writing and signed by each of CG&E, ULH&P, and Supplier.

This Consent shall be governed by Ohio law, excluding its conflicts of law provisions.

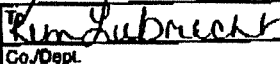
IN WITNESS WHEREOF, the undersigned entity has caused this Consent to Assignment and Assumption Agreement with respect to the Amended and Restated Coal Supply Agreement to be executed on its behalf by its officer thereunto duly authorized, all as of the day and year first above written.

By: _____

Name: _____

Title: _____

Date: 2-2-06

Post-It® Fax Note	7671	Date	2.2.06	# of pages	2
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Co./Dept.		Co.			
Phone #		Phone #	0		
Fax # 419-5840		Fax #			