

DORSEY, KING, GRAY, NORMENT & HOPGOOD

ATTORNEYS-AT-LAW

318 SECOND STREET

HENDERSON, KENTUCKY 42420

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December 11, 2008

FEDEX

Ms. Stephanie Stumbo
Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RECEIVED

DEC 12 2008

**PUBLIC SERVICE
COMMISSION**

Re: Kenergy Corp.

Special contract with Armstrong Coal Company, Inc.

Wholesale Supplier: Big Rivers
Electric Corporation

Dear Ms. Stumbo:

Kenergy Corp. ("Kenergy") requests the Commission's acceptance of a special retail contract with Armstrong Coal Company, Inc. This special contract is titled Agreement for Electric Service and enclosed herewith please find the signed original and one copy.

Further enclosed are the signed original and one copy of Letter Agreement between Kenergy and Big Rivers Electric Corporation which covers the wholesale side of this transaction. The Commission is requested to accept this Letter Agreement in connection with the transaction.

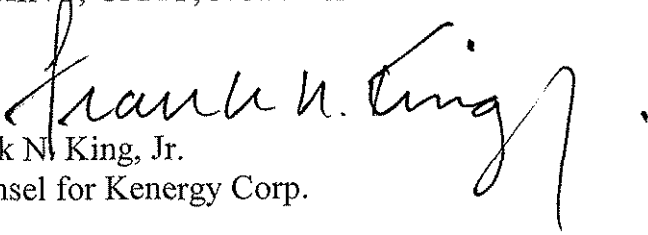
The customer has requested that this transaction become effective January 1, 2009. Therefore, Kenergy respectfully requests that the notice period be shortened to 20 days to accommodate the customer.

Your assistance in this matter is appreciated.

Very truly yours,

DORSEY, KING, GRAY, NORMENT & HOPGOOD

By


Frank N. King, Jr.
Counsel for Kenergy Corp.

FNKJr/cds

Encls.

COPY/w/Encls.: Mr. Mason Miller
Mr. James Miller
Mr. David Hamilton
Mr. David Spainhoward



Big Rivers
Electric Corporation

201 Third Street
P.O. Box 24
Henderson, KY 42419-0024
270-827-2561
www.bigrivers.com

December 9, 2008

RECEIVED

DEC 12 2008

**PUBLIC SERVICE
COMMISSION**

Mr. Sandy Novick
Kenergy Corp.
6402 Corydon Road
P.O. Box 18
Henderson, KY 42419-0018

Re: Retail Electric Service Agreement
Armstrong Coal Company, Inc.

Dear Sandy:

This letter agreement ("Letter Agreement") will evidence Big Rivers' concurrence with the terms of Kenergy's electric service agreement with Armstrong Coal Company, Inc. (the "Retail Customer") dated December 9, 2008, a copy of which is attached hereto as Exhibit 1 (the "Retail Agreement"), and the agreement between Big Rivers and Kenergy with respect thereto.

(1) **Existing Agreement and Tariffs.** The terms and conditions of the June 11, 1962, wholesale power agreement, as amended, and Big Rivers' filed tariffs shall continue in full force and effect except as expressly modified by this Letter Agreement.

(2) **Additional Rights and Obligations of Big Rivers.** Big Rivers shall make available to Kenergy the electric power required during the term of the Retail Agreement to perform the power supply obligations assumed by Kenergy in the Retail Agreement and Big Rivers shall have the benefit of Retail Customer's covenants in such agreement. Big Rivers will supply the facilities required to deliver power to the delivery point, as defined in the Retail Agreement, and to meter electrical usage by Retail Customer.

(3) **Obligations of Kenergy.** Kenergy shall take and pay for (i) electric power and energy delivered by Big Rivers in accordance with Big Rivers' Rate Schedule 7 or Rate Schedule 10, as applicable, with demand and energy being measured in accordance with the Retail Agreement, and (ii) transmission services and facilities charges incurred by Big Rivers in connection with extending service to the Retail Customer's delivery point. Kenergy will promptly forward to Big Rivers a copy of any notices received by Kenergy from the Retail Customer under the terms of the Retail Agreement.

(4) **Obligation of Kenergy for Minimum Billing Demand Charge.** Kenergy agrees to bill Retail Customer for (i) any minimum billing demand charges in excess of measured

Mr. Sandy Novick
December 9, 2008
Page Two

demand, and (ii) all transmission services and facilities charges incurred by Big Rivers and billed to Kenergy in connection with extending service to the Retail Customer's delivery point. Kenergy agrees to pay over to Big Rivers all funds actually collected under such billings, including any termination charges respecting the KU Facilities and the Big Rivers Facilities (as those terms are defined in the Retail Agreement). The terms of this paragraph do not affect the obligation of Kenergy to pay Big Rivers in accordance with Big Rivers' tariff as and when billed for the wholesale charges for electric power and energy actually consumed by Retail Customer.

(5) **Division of Any Partial Payments.** Kenergy will pay to Big Rivers a pro rata share of any partial payment made to Kenergy by or on behalf of Retail Customer.

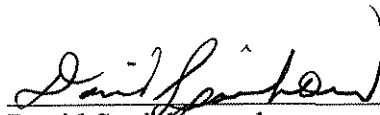
(6) **Effective Date.** This Letter Agreement will become effective upon approval or acceptance by the Public Service Commission of Kentucky.

(7) **Entire Agreement and Amendment.** This Letter Agreement represents the entire agreement of the parties on the subject matter herein, and cannot be amended except in writing, duly authorized and signed by Big Rivers and Kenergy. The Retail Agreement cannot be amended without the written approval of Big Rivers. Big Rivers shall have the right to approve the terms and issuer(s) of the letter(s) of credit contemplated by the Retail Agreement to secure the obligations of the Retail Customer for termination charges.

If this Letter Agreement is acceptable to Kenergy, please indicate that acceptance by signing in the space provided and returning four copies to us.

Sincerely yours,

BIG RIVERS ELECTRIC CORPORATION



David Spainhower
Vice President of External Relations

ACCEPTED:

KENERGY CORP.



Sanford Novick
President/CEO

Date: 12/9/08

AGREEMENT FOR ELECTRIC SERVICE

AGREEMENT made December 9, 2008, between KENERGY CORP, 6402 Old Corydon Road, Henderson, Kentucky 42420 (hereinafter called the "Seller"), and Armstrong Coal Company, Inc. with a service address at Armstrong Dock., 660 A12 Road, Centertown, Kentucky 42328 (the "Armstrong Dock") and corporate address at 407 Brown Road, Madisonville, Kentucky 42431, (hereinafter called the "Consumer"), a corporation.

The Seller shall sell and deliver to the Consumer, and the Consumer shall purchase all of the electric power and energy, which the Consumer may need at the aforementioned location, up to 2,000 kilowatts (the "Maximum Demand"), except as otherwise provided herein, upon the following terms:

1. **SERVICE CHARACTERISTICS**

- A. Service hereunder shall be alternating current, 3 phase, sixty cycles, nominal 69,000 volts.
- B. The Consumer shall not use the electric power and energy furnished hereunder as an auxiliary or supplement to any other source of power and shall not sell electric power and energy purchased hereunder.
- C. The Consumer acknowledges that Seller's wholesale power supplier is transmitting electric power and energy to Seller for sale hereunder across the transmission system of Kentucky Utilities Company (the "KU System").

2. **PAYMENT**

- A. The Consumer shall pay the Seller for service hereunder at the rates and upon the terms and conditions set forth in Seller's Schedule 31, as it may be amended from time to time. A copy of Seller's current Schedule 31 is attached to and made a part of this Agreement as Exhibit "A." Notwithstanding any provision of the Schedule 31 and irrespective of Consumer's requirements for or use of electric power and energy, the demand for billing purposes hereunder shall be not less than 400 kilowatts per billing period (per month) through the calendar month of February, 2009; and 1,200 kilowatts for any billing period (per month) thereafter. In any event, based upon Seller's current rates the Consumer shall pay the Seller not less than \$4,160 per month through the calendar month of February, 2009, and not less than \$12,280 per month for service or for having service available hereunder during the remainder of the Term hereof.
- B. Consumer's Maximum Demand under this Agreement may be unilaterally increased by Consumer, from time to time, up to a Maximum Demand of 4,000 kW by Consumer giving written notice to Seller at least 45 days prior to the effective date of the increase. The effective date of any unilateral increase by Consumer in its Maximum Demand shall be the first day of a calendar month, and on and after that date Consumer's minimum billing demand per month shall be the new Maximum Demand, multiplied by the

demand rate applicable to Consumer under Seller's applicable tariff, multiplied by 60%.

- C. The initial billing period shall start when Consumer begins using electric power and energy, or 30 days after the Seller notifies the Consumer in writing that service is available hereunder, whichever shall occur first; subject, however, to conditions of Section 8, below.
- D. Bills for service hereunder shall be paid at the office of the Seller at Kenergy Corp, 6402 Old Corydon Rd., Henderson, KY 42420.
- E. Such payments shall be due on the 25th day of each month for service furnished during the preceding monthly billing period.
- F. If the Consumer shall fail to make any such payment within fifteen (15) days after such payment is due, the Seller may discontinue service to the Consumer upon giving fifteen (15) days' written notice to the Consumer of its intention so to do, provided, however, that such discontinuance of service shall not relieve the Consumer of any of its obligations under this Agreement.
- G. The Consumer agrees that if, at any time, the rate under which the Seller purchases electric service at wholesale is modified, the Seller may make an equivalent modification in the rate for service hereunder.
- H. Consumer acknowledges that it has requested Seller to deliver service under this Agreement across the KU System. Accordingly, Consumer further agrees to pay, on the terms stated in this Section

2, any charges payable by Seller's wholesale power supplier under the Kentucky Utilities Company ("KU") open access transmission tariff arising out of, related to or connected with providing service to Consumer under this Agreement that are billed to Seller by its wholesale power supplier, and to Consumer by Seller. Consumer further acknowledges that transmission capacity across the KU System is reserved and paid for on an annual basis. Seller agrees that if this Agreement is terminated, Seller will use reasonable commercial efforts to mitigate Consumer's exposure to costs for transmission capacity on the KU System that has been reserved for purposes of performing this Agreement, but which will be unutilized for those purposes following the termination of this Agreement.

- I. Consumer's payment obligations under this Section 2 shall survive termination of this Agreement.

3. **MEMBERSHIP**

The Consumer shall become a member of the Seller, shall pay the membership fee and be bound by such generally applicable rules and regulations as may from time to time be adopted by the Seller.

4. **CONTINUITY OF SERVICE**

The Seller shall use reasonable diligence to provide a constant and uninterrupted supply of electric power and energy hereunder. If the supply of electric power and energy shall fail or be interrupted, or become defective through act of God, governmental authority, action of the elements, public enemy,

accident, strikes, labor trouble, required maintenance work, inability to secure right-of-way, or any other cause beyond the reasonable control of Seller, then Seller shall not be liable therefor or for damages caused thereby.

5. **RIGHT OF ACCESS**

Duly authorized representatives of the Seller shall be permitted to enter the Consumer's premises at all reasonable times in order to carry out the provisions hereof.

6. **TERM**

This Agreement shall become effective upon the approval or acceptance referred to below in Section 8, and shall remain in effect until ten (10) years following the start of the initial billing period and thereafter until and unless terminated by either party giving to the other three (3) months notice in writing (the "Term").

7. **CONSUMER CONTRIBUTION, TERMINATION CHARGE AND DEPOSIT**

A. Extension of service to Consumer's delivery point requires construction of certain facilities (the "Facilities") by Seller's wholesale power supplier (the "Big Rivers Facilities") and the transmission provider (the "KU Facilities," and, together with the Big Rivers Facilities, the "Facilities"). A description of the Facilities is contained in Addendum 1.20, and is shown, in part, on the attached Exhibit B.

B. Seller currently estimates the cost of providing the Big Rivers Facilities will be \$150,000. Consumer shall be responsible for the actual cost to Seller (or Seller's wholesale power supplier) of the Big Rivers

Facilities (the "Big Rivers Facilities Cost") on the terms stated in this Section 7.

C. Seller currently estimates the cost of providing the KU Facilities will be \$370,000, plus the cost of KU related communications facilities. Consumer shall be responsible for the actual cost to Seller (or Seller's wholesale power supplier) of the KU Facilities (the "KU Facilities Cost") on the terms stated in this Section 7, and shall have the benefit of any terms for payment of those costs that may be available to Seller (or Seller's wholesale power supplier) from KU. If alternate terms for payment of the KU Facilities Cost are available from KU, Consumer may select the payment terms it prefers, with the consent of Seller, provided that Seller's selection shall be made on a timely basis as is required to meet KU's schedule for that selection. Seller will bill Consumer for the actual cost to Seller of the KU Facilities Cost on Consumer's monthly invoice for electric service, and the amount billed for the KU Facilities Cost will be due and payable on the same terms applicable to other charges for electric service in that invoice. The portion of the total KU Facilities Cost that appears on any monthly invoice to Consumer shall reasonably reflect the terms for payment of the total KU Facilities Cost available to Seller (or Seller's wholesale power supplier) from KU.

D. Upon the termination of this Agreement for any reason, in addition to any other amounts due under this Agreement, Consumer shall pay Seller a termination charge (the "Termination Charge") equal to the sum of (i) the

portion of the KU Facilities Cost which remains unpaid by Consumer on the termination date, and (ii) the Big Rivers Facilities Cost, provided, however, that the Termination Charge, when due, shall be credited by \$0.90 per kilowatt (including kilowatts implicit in a minimum bill) paid for by Consumer under this Agreement up to and including the date of such termination, with the maximum credit not to exceed the actual cost of the Big Rivers Facilities. As security for payment of the Termination Charge, Consumer has provided Seller with the delivery of this Agreement an irrevocable bank letter of credit in the amount of \$150,000, and Seller hereby acknowledges receipt of same. Consumer agrees that within 30 days after Seller notifies Consumer of the KU Facilities Cost, the amount of this irrevocable bank letter of credit shall be adjusted to equal the sum of (x) Seller's obligation for the KU Facilities Cost, reduced by the portion of Consumer's first payment attributable to the KU Facilities Cost, and (y) the Big Rivers Facilities Cost, credited by \$0.90 per kilowatt (including kilowatts implicit in a minimum bill) paid for by Consumer under this Agreement.

E. As security for payment of its monthly billing obligations, Consumer shall further be required to provide Seller a cash deposit or provide an irrevocable bank letter of credit representing two (2) months' estimated billing, being the total amount of \$150,000.00 on the date of this Agreement, and Seller hereby acknowledges receipt of same.

F. Any cash deposit will earn interest in accordance with law, and interest earned will be paid annually to Consumer. Letters of credit for the foregoing

securities may be combined, and must be approved in advance by Seller as to form and issuer. Annually the Parties shall adjust the deposit or bank letter of credit required by Paragraph 7(E) reasonably to reflect changes in the amounts of the obligations of Consumer secured by the deposit or bank letter(s) of credit. The Parties shall adjust the deposit or bank letter of credit required by Paragraph 7(D) to reflect changes in the amounts of the obligations of Consumer secured by the deposit or bank letter of credit whenever requested by Consumer, but not more frequently than twelve times in any calendar year.

G. Consumer's obligations under this Section 7 shall survive termination of this Agreement.

8. **SUCCESSION AND APPROVAL**

This Agreement shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the respective parties hereto and may be assigned by Consumer with the consent of Seller, which consent shall not be unreasonably withheld. Any assignment of this Agreement by Consumer shall not relieve Consumer of its obligations to Kenergy hereunder unless Consumer has been expressly relieved of those obligations by Kenergy, in writing. This contract shall not be effective unless approved or accepted in writing by the Kentucky Public Service Commission.

9. **ADDENDA**

The addenda to this agreement are attached hereto and incorporated herein as a part of this agreement for electric service.

10. **INDEMNIFICATION**

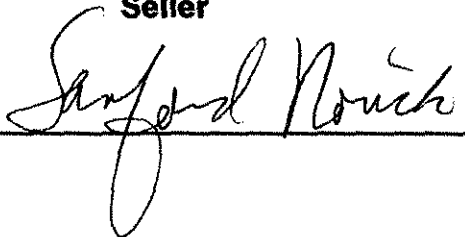
Consumer agrees to indemnify and hold Seller harmless from and against any and all claims, demands, damages, judgments, losses or expenses asserted against Seller by or on behalf of KU arising out of, related to or concerning damage to the KU System, or any system or electric consuming facilities connected to the KU System resulting from Consumer's operations, activities or usage of electric power and energy hereunder.

11. **NOTICE TO BIG RIVERS ELECTRIC CORPORATION**

Any notice from Consumer to Seller required by the terms of this Agreement shall be given concurrently to Big Rivers Electric Corporation, 201 Third Street, Henderson, KY 42420, Attn: President and CEO, using the same methodology required by this Agreement for notice to Kenergy.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement all as of the day and year first above written.

KENERGY CORP.
Seller

By 

Printed Name Sanford Novick

Title President and CEO

ARMSTRONG COAL COMPANY, INC.
Consumer

By Mart D. Wilson

Printed Name Martin D. Wilson

Title President



Henderson, Kentucky

FOR ALL TERRITORY SERVED

Community, Town or City

PSC NO. 1

First Revised SHEET NO. 31

CANCELLING PSC NO. _____

Original SHEET NO. 31

CLASSIFICATION OF SERVICE

(T)

Schedule 31 - Dedicated Delivery Point Class C

AVAILABLE

(T)

This rate shall apply to large customers where service is provided through a dedicated substation connected to the 69 kv. transmission system of Big Rivers or other accessible system.

CONDITIONS OF SERVICE

An "Agreement for Purchase of Power" shall be signed by any new customer prior to service under this rate.

CHARACTER OF SERVICE

Service shall be the 60 Hz, 3-phase, at voltage as mutually agreed by the Seller.

DETERMINATION OF BILLING DEMAND

(T)

For all delivery points, the Billing Demand in kilowatts shall be the highest of: a) The customer's maximum integrated thirty-minute demand at such delivery point during each billing month, determined by meters which record at the end of each thirty-minute period the integrated kilowatt demand during the preceding thirty minutes; or b) the Contract Demand.

POWER FACTOR ADJUSTMENT

The customer agrees to maintain a power factor as nearly as practical to unity. The company will permit the use of apparatus that shall result, during normal operation, in a power factor not lower than 90%. At the Company's option, in lieu of the customers providing the above corrective equipment when power factor is less than 90%, the Company may adjust the maximum measured demand for billing purposes in accordance with the following formula:

$$\frac{\text{Max. Measured KW} \times 90\%}{\text{Power Factor (\%)}}$$

The power factor shall be measured at time of maximum load.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE
6/14/2005
PURSUANT TO 807 KAR 5:011
SECTION 9(1)

DATE OF ISSUE June 27, 2005 DATE EFFECTIVE June 14, 2005

ISSUED BY Mark A. Bailey TITLE it and CEO
SIGNATURE OF OFFICER By [Signature]
Executive Director

ISSUED BY AUTHORITY OF PSC ORDER NO. 2004-00446.



Henderson, Kentucky

FOR ALL TERRITORY SERVED

Community, Town or City

PSC NO. 1

Second Revised SHEET NO. 31A

CANCELLING PSC NO.

First Revised SHEET NO. 31A

CLASSIFICATION OF SERVICE

(T) Schedule 31 - Dedicated Delivery Point - Class C

METERING

Electrical usage will be metered at the transmission voltage supplied or at the customer's secondary voltage with a 1.0% adder to the metered KWH to account for transformer losses, as determined by Seller.

MONTHLY RATE

Customer Charge per delivery point.....\$100.00
Demand Charge per KW of Billing Demand\$ 10.15

(R) Energy Charges:
Per KWH 0.016715

Monthly Facilities Charge per Assigned Dollar 1.35%
of Investment by Kenergy in substation,
transformer, feeder, etc.

TAXES AND FEES

School Taxes added to bill if applicable.
Kentucky Sales Taxes added to bill if applicable.

FRANCHISE CHARGE

The rate herein provided shall include, where applicable, an additional charge for local government franchise payment determined in accordance with the Franchise Billing Plan as set forth in the rules and regulations of this tariff.

MINIMUM DEMAND CHARGE

The minimum demand charge shall be no less than the amount as specified in the "Agreement for Purchase of Power."

TERMS OF PAYMENT

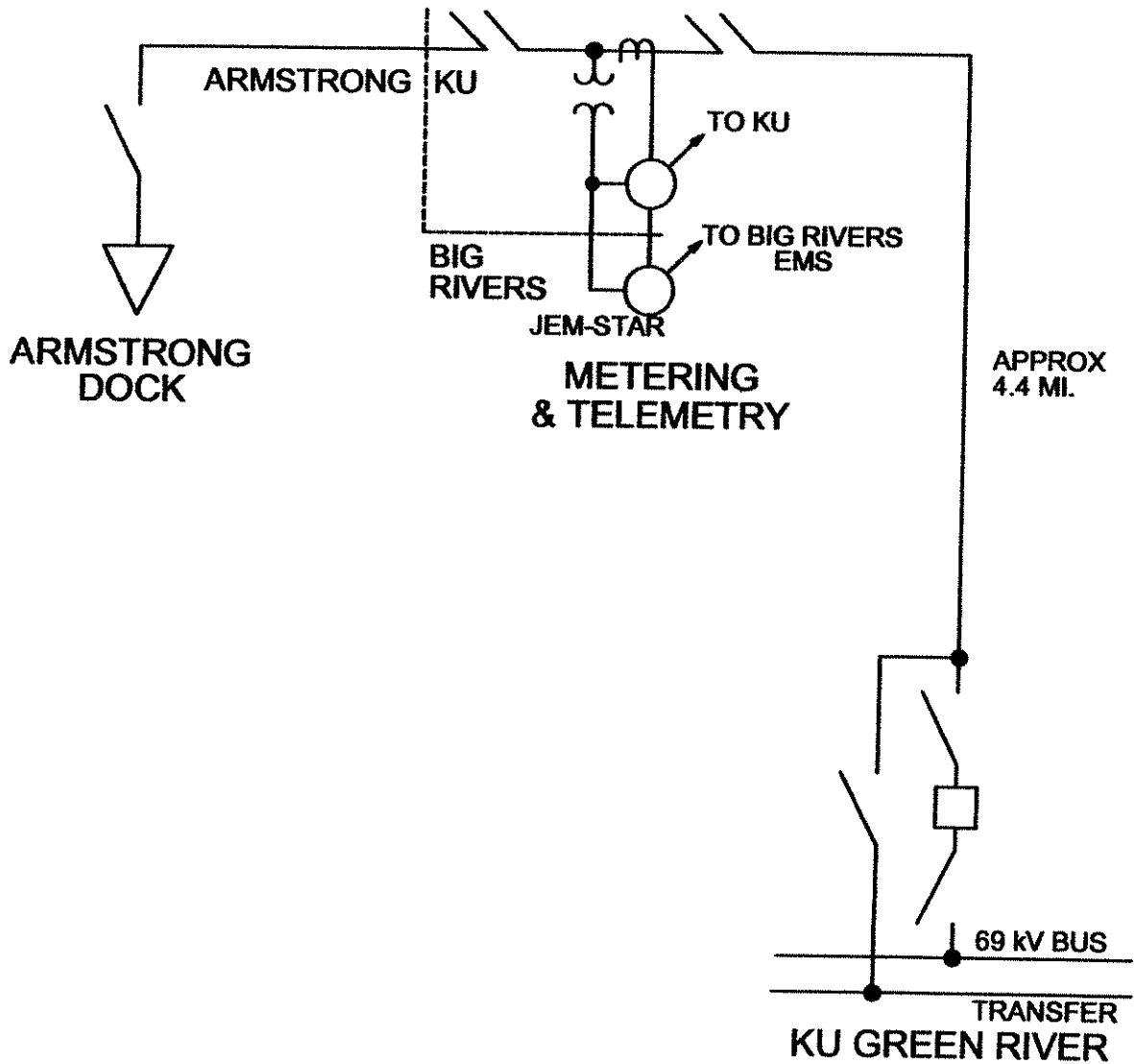
The above rates are net, the gross rate being five percent (5%) greater. In the event the current monthly bill is not paid within twenty (20) days from the date of the bill, the gross rate will apply.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE
6/14/2005
PURSUANT TO 807 KAR 5:011
SECTION 9 (1)

DATE OF ISSUE June 27, 2005 DATE EFFECTIVE June 14, 2005

ISSUED BY [Signature] SIGNATURE OF OFFICER TITLE By [Signature] nt and CEO
Executive Director

ISSUED BY AUTHORITY OF PSC ORDER NO'S. 2004-00446.



REV	BY	ENG	DATE	DESCRIPTION
0		RW	6-08	

 BigRivers Electric Corporation	<small>KENTUCKY 02</small> <small>A Touchstone Energy Partner</small>
	<small>HENDERSON, KENTUCKY</small>
BIG RIVERS - KU ARMSTRONG DOCK 69 kV SERVICE	DRAWING S210.0751

ADDENDA TO AGREEMENT FOR ELECTRIC SERVICE

ADDENDUM 1

1.10 Facilities to be Provided by Consumer.

1.11 Consumer will provide or cause to be provided (without cost to the Seller) permanent easements upon Consumer's property which in the opinion of the Seller are necessary for the construction of facilities which the Seller or its wholesale power supplier must furnish to provide electric service under this Agreement.

1.12 Except as provided in Section 1.20 of this Addendum, Consumer shall furnish and install, or cause to be furnished or installed, such facilities and equipment as may be necessary to enable it to receive and use electric power and energy purchased hereunder at and from the delivery point, including but not limited to (i) such protective devices as may be reasonably necessary in the opinion of the Seller to protect the system of the Seller or the KU System from disturbances caused by Consumer, (ii) voltage regulation capability in the Consumer-provided electrical facilities sufficient to meet the operating requirements of all Consumer's production equipment over the full range of acceptable transmission delivery voltage, and (iii) protection devices as needed to prevent damage to that production equipment during voltage excursions outside of the full range of acceptable transmission delivery voltage. Plans for equipment to be

installed for such protection shall be submitted to Seller for prior approval.

1.20 **Facilities to be Provided by Seller.** Seller shall furnish and install, or cause to be furnished and installed, all of the facilities required for the delivery of electric power and energy to the delivery point, including the following facilities.

1.21 Approximately 4.4 miles of 69,000 volt electric transmission line extending from the KU System to Big Rivers' metering installation near Consumer's substation yard, as shown on the drawing attached as Exhibit B.

1.22 Metering, communications, relaying, and control circuits (as mutually agreed upon) and as necessary for proper measurement, control and coordination between Seller's and Consumer's facilities, as shown in part on the drawing attached as Exhibit B.

1.30 **Construction Standards.** Consumer shall construct and maintain any facilities it builds under an obligation created by this Agreement in accordance with applicable provisions of the National Electrical Safety Code of the American National Standards Institute (ANSI C2), and other applicable laws, codes and regulations, provided however Seller shall have no duty to inspect those facilities for conformance with such standards or have any responsibility for the means, methods or techniques employed by Consumer or its contractor in the construction of these facilities. Each party shall own, maintain and operate the facilities it purchases and installs.

1.40 **Electric Disturbances and Phase Balancing.**

(a) Consumer shall not use the power and energy delivered under this Agreement in such manner as to cause a "System Disturbance." A

System Disturbance is a use of electric power and energy which directly or indirectly results in a risk of harm to human beings or material damage to or interference with the transmission system of Seller's wholesale power supplier (the "Wholesale Transmission System"), the KU System, a system connected with the Wholesale Transmission System or the KU System, or facilities or other property in proximity to the Wholesale Transmission System or the KU System, or the plant, facility, equipment or operations of any other customer served directly or indirectly from the Wholesale Transmission System or the KU System. A System Disturbance includes, but is not limited to: (a) Harmonic Distortion: a level of current harmonic total demand distortion (TDD) measured at the Consumer's delivery point that exceeds the limits on TDD described in IEEE Standard 519, Section 10; and, (b) Phase Imbalance: a use of capacity and energy in such a manner that causes a current imbalance between phases greater than 5% at a retail customer's delivery point.

- (b) Seller may require Consumer, at Consumer's expense, to make such changes in its system as may be reasonably necessary to eliminate System Disturbances. If Consumer's use of power and energy creates an imbalance between phases that causes a System Disturbance, and fails to make changes in its system requested by Seller to correct such condition, in addition to any other remedies it has Seller make, in its determination of billing demand, assume that the load on each phase is equal to the greatest load on any phase.

- (c) Consumer shall maintain a power factor at the delivery point as nearly as practicable to unity. Power factor during normal operation may range from unity to ninety percent (90%). If Consumer's power factor is less than 90% at time of maximum load, Seller reserves the right to require Consumer to choose either (a) installation at Consumer's expense of equipment which will maintain a power factor of 90% or higher; or (b) adjustment of the maximum monthly metered demand for billing purposes in accordance with the following formula:

$$\frac{\text{Maximum Actual Measured Kilowatts} \times 90\%}{\text{Power Factor (\%)}}$$

- (d) Consumer acknowledges and agrees that Seller shall have no responsibility for damage to any property, or to any equipment or devices connected to Consumer's electrical system on Consumer's side of the delivery point that results solely from acts or omissions of Consumer, its employees, agents, contractors or invitees, or malfunction of any equipment or devices connected to Consumer's electrical system on Consumer's side of the delivery point.

ADDENDUM 2

[Reserved]

ADDENDUM 3

Force Majeure. In the event performance of this Agreement is limited or prevented in whole or in part by Acts of God, strikes, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires,

storms, floods, washouts, arrests and restraints of the Government (whether federal, state, or local, civil or military), civil disturbances, explosions, breakage of or accident to machinery, equipment or transmission lines, or inability of either party hereto to obtain necessary materials, supplies, or permits due to existing or future rules, regulations, orders, laws or proclamations of governmental authorities (whether federal, state, or local, civil or military), upon such party's giving notice and reasonably full particulars of such force majeure or uncontrollable force, in writing or by telegraph to the other party within a reasonable time after the occurrence of the cause relied on, the party whose performance is so limited or prevented shall be excused, discharged and released from the performance to the extent such performance is limited or prevented, but only for the period when the performance is limited or prevented and thereafter all of the terms of this Agreement shall remain in effect except that the term of the agreement shall be extended for a period equal to the duration of the aforesaid force majeure. A minimum bill due during a billing period when a force majeure event occurs shall be prorated based upon the duration of the period of force majeure, but nothing contained herein shall excuse Consumer from the obligations of paying at the time provided herein, for any power consumed by it. In no event shall this Agreement subject either party to liability for consequential or incidental damages, or damages for loss of anticipated profits.

ADDENDUM 4

Successors in Interest. Consumer may with written approval of the Seller assign or transfer this Agreement and such approval shall not be unreasonably withheld. In such event such assignee or transferee shall assume all obligations or

responsibilities of Consumer under this Agreement, and the Consumer shall then become only secondarily liable for such obligations and responsibilities.

ADDENDUM 5

5.10 **Remedies of the Parties.** Waiver at any time by either party of rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any subsequent default or matter. Except as specifically provided herein, this Agreement shall not be construed to abridge, limit, or deprive either party of any remedy for breach of the provisions herein which would otherwise be available at law or equity.

5.20 **Reports and Information.** Consumer shall furnish to the Seller such reports and information concerning its operations as the Seller may reasonably request from time to time.

5.30 **Notices.** Any written notice, demand or request required or authorized under this Agreement shall be deemed properly given to or served on Seller if mailed to:

Kenergy Corp.,
Attention: President & CEO
Post Office Box 18
Henderson, Kentucky 42419-0018

Any such notice, demand or request shall be deemed properly given to or served on Consumer if mailed to:

Armstrong Coal Company, Inc.
c/o David R. Cobb
407 Brown Road
Madisonville, KY 42431

5.40 **Jurisdiction and Venue.** The terms, covenants and conditions herein contained constitute the entire agreement between the parties and shall supersede all previous communications, representations, or agreements, either oral or written,

between the parties hereto with respect to the subject matter hereof, provided, however, that service to the Consumer is subject to the provisions of the Articles of Consolidation and Bylaws of Seller and is subject to the lawful orders of the Kentucky Public Service Commission. All respective rights and obligations of the parties shall be governed by the laws of the State of Kentucky. Venue of any action, legal or equitable, having as its basis the enforcement or interpretation of this contract, shall be Henderson County, Kentucky.

5.50 **Severability.** Should any provision or provisions of this Agreement be declared void or illegal by any court of competent jurisdiction, then such void or illegal provision or provisions shall be severed from this Agreement, and all other provisions hereof shall remain in full force and effect.