



October 25, 2012

Mr. Jeff Derouen  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602

RECEIVED  
OCT 25 2012  
PUBLIC SERVICE  
COMMISSION

Re: PSC Case No. 2012-00319

Dear Mr. Derouen:

Please find enclosed for filing with the Commission in the above-reference case an original and ten redacted copies of East Kentucky Power Cooperative, Inc.'s ("EKPC") responses to Commission's Information Request at Hearing Held on October 11, 2012, and EKPC's Petition for Confidential Treatment of Information. One copy of the designated confidential portions of the responses is enclosed in a sealed envelope.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Roger R. Cowden'.

Roger R. Cowden  
Counsel

Enclosures

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

**In the Matter of:**

**AN EXAMINATION OF THE )  
APPLICATION OF THE FUEL )  
ADJUSTMENT CLAUSE OF EAST )  
KENTUCKY POWER COOPERATIVE, ) CASE NO. 2012-00319  
INC. FROM NOVEMBER 1, 2011 THROUGH )  
APRIL 30, 2012 )**

**PETITION FOR CONFIDENTIAL  
TREATMENT OF INFORMATION**

Comes now the petitioner, East Kentucky Power Cooperative, Inc. (“EKPC”) and, as grounds for this Petition for Confidential Treatment of Information (the “Petition”), states as follows:

1. This Petition is filed in conjunction with the filing of EKPC’s response to Request 3 to the Commission’s Information Request at Hearing Held on October 11, 2012, and relates to confidential information contained in those responses that is entitled to protection pursuant to 807 KAR 5:001 Section 7 and KRS §61.878 (1) (c) 1 and related sections.

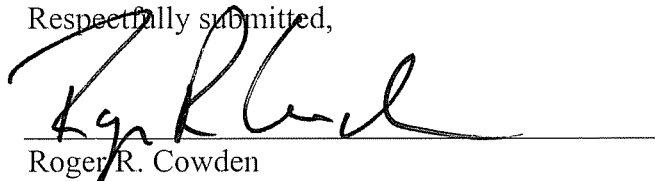
2. The response to Request 3 contains certain information with respect to internal strategic Board policies of EKPC which, if disclosed, could place EKPC at an unfair competitive disadvantage in the marketplace.

3. Along with this Petition, EKPC has enclosed one copy of its response to Request 3, with the confidential information identified by highlighting or other designation, and 10 copies of the complete responses, with the confidential information redacted. The identified confidential information is not known outside of EKPC and is

distributed within EKPC only to persons with a need to use it for business purposes. It is entitled to confidential treatment pursuant to 807 KAR 5:001 Section 7 and KRS §61.878(1)(c) 1, for the reasons stated hereinabove, as information which would permit an unfair commercial advantage to competitors of EKPC if disclosed. The subject information is also entitled to protection pursuant to KRS §61.878(1)(c) 2 c, as records generally recognized as confidential or proprietary which are confidentially disclosed to an agency in conjunction with the regulation of a commercial enterprise.

WHEREFORE, EKPC respectfully requests the Public Service Commission to grant confidential treatment to the identified information and deny public disclosure of said information.

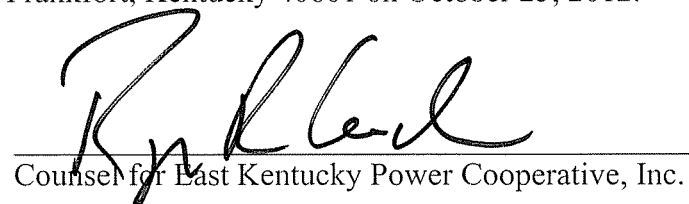
Respectfully submitted,



Roger R. Cowden  
East Kentucky Power Cooperative, Inc.  
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Counsel for East Kentucky Power Cooperative, Inc.

**CERTIFICATE OF SERVICE**

This is to certify that an original and 10 copies of the foregoing Petition for Confidential Treatment of Information in the above-styled case were hand-delivered to the Office of Jeffrey Derouen, Executive Director of the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601 on October 25, 2012.



Counsel for East Kentucky Power Cooperative, Inc.

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

**In the Matter of:**

**AN EXAMINATION OF THE )  
APPLICATION OF THE FUEL )  
ADJUSTMENT CLAUSE OF EAST )  
KENTUCKY POWER COOPERATIVE, ) CASE NO. 2012-00319  
INC. FROM NOVEMBER 1, 2011 )  
THROUGH APRIL 30, 2012 )**

**RESPONSE OF EAST KENTUCKY POWER COOPERATIVE, INC.  
TO COMMISSION'S INFORMATION REQUEST AT  
HEARING HELD ON OCTOBER 11, 2012**

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

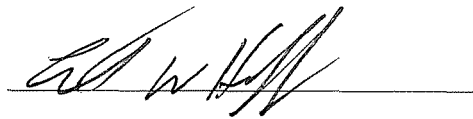
In the Matter of:

AN EXAMINATION OF THE	)	
APPLICATION OF THE FUEL	)	
ADJUSTMENT CLAUSE OF EAST	)	
KENTUCKY POWER COOPERATIVE,	)	CASE NO. 2012-00319
INC. FROM NOVEMBER 1, 2011	)	
THROUGH APRIL 30, 2012	)	

CERTIFICATE

STATE OF KENTUCKY )  
 )  
 COUNTY OF CLARK )

Ernest W. Huff, being duly sworn, states that he has supervised the preparation of the responses of East Kentucky Power Cooperative, Inc. to the Public Service Commission's Information Request at hearing held on October 11, 2012 in the above referenced case, and that the matters and things set forth therein are true and accurate to the best of his knowledge, information and belief, formed after reasonable inquiry.



Subscribed and sworn before me on this 25<sup>th</sup> day of October 2012.



Notary Public

MY COMMISSION EXPIRES NOVEMBER 30, 2013  
 NOTARY ID #409352

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION OF THE	)	
APPLICATION OF THE FUEL	)	
ADJUSTMENT CLAUSE OF EAST	)	
KENTUCKY POWER COOPERATIVE,	)	CASE NO. 2012-00319
INC. FROM NOVEMBER 1, 2011	)	
THROUGH APRIL 30, 2012	)	

CERTIFICATE

STATE OF KENTUCKY )  
 )  
 COUNTY OF CLARK )

Craig A. Johnson, being duly sworn, states that he has supervised the preparation of the responses of East Kentucky Power Cooperative, Inc. to the Public Service Commission's Information Request at hearing held on October 11, 2012 in the above referenced case, and that the matters and things set forth therein are true and accurate to the best of his knowledge, information and belief, formed after reasonable inquiry.



Subscribed and sworn before me on this 25<sup>th</sup> day of October 2012.



Notary Public

MY COMMISSION EXPIRES NOVEMBER 30, 2013  
 NOTARY ID #409352







**EAST KENTUCKY POWER COOPERATIVE, INC.**  
**PSC CASE NO. 2012-00319**  
**FUEL ADJUSTMENT CLAUSE**  
**RESPONSE TO INFORMATION REQUEST**

**COMMISSION'S INFORMATION REQUEST AT HEARING HELD ON 10/11/12**  
**REQUEST 1**

**RESPONSIBLE PARTY: Ernest W. Huff**

**Request 1.** Refer to the response to Request 9, page 2 of 2. Please identify the publication which serves as the source for the utility comparisons.

**Response 1.** The publication is Ventyx Coal Pricing Forecast: [www.ventyx.com](http://www.ventyx.com).



EAST KENTUCKY POWER COOPERATIVE, INC.  
PSC CASE NO. 2012-00319  
FUEL ADJUSTMENT CLAUSE  
RESPONSE TO INFORMATION REQUEST

COMMISSION'S INFORMATION REQUEST AT HEARING HELD ON 10/11/12  
REQUEST 2

RESPONSIBLE PARTY: Ernest W. Huff

**Request 2.** Refer to the response to Request 14, page 3 of 3. The last sentence states: "A plan was proposed in the bankruptcy proceeding and has been approved." Please provide a copy of this proposed plan.

**Response 2.** Please see pages 2 through 44 of this response.

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF KENTUCKY  
ASHLAND DIVISION**

IN RE:

APPALACHIAN FUELS, LLC	CASE NO. 09-10343,
APPALACHIAN HOLDING COMPANY, INC.	CASE NO. 09-10372,
APPALACHIAN PREMIUM FUELS, LLC	CASE NO. 09-10373,
APPALACHIAN ENVIRONMENTAL, LLC	CASE NO. 09-10374,
KANAWHA DEVELOPMENT CORPORATION	CASE NO. 09-10375,
APPALACHIAN COAL HOLDINGS, INC.	CASE NO. 09-10405,
SOUTHERN EAGLE ENERGY, LLC	CASE NO. 09-10406

CHAPTER 11

DEBTORS

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**DEBTORS', APPALACHIAN FUELS, LLC COMMITTEE'S AND  
APPALACHIAN PREMIUM FUELS, LLC COMMITTEE'S  
FIRST AMENDED  
JOINT PLAN OF ORDERLY LIQUIDATION AND DISTRIBUTION**

---

Respectfully submitted,

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PREMIUM FUELS, LLC

Dated: August 11, 2011

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The Debtors, the Official Committee of Unsecured Creditors of Appalachian Fuels, LLC (the “Committee”) and the Official Committee of Unsecured Creditors of Appalachian Premium Fuels, LLC (the “AppPremFuels Committee”) propose the following Joint Plan of Liquidation (the “Plan”) to the Creditors of the Debtors pursuant to the provisions of Code § 1121(c):

## ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Defined Terms and Rules of Construction: All capitalized terms used herein shall have the meanings defined to them below or, if not defined below, then as defined in the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, unless the context clearly requires otherwise. The rules of construction used in Code §102 shall apply to the construction of this Plan.

1.1.1 “ABC Action” shall mean that certain Assignment for Benefit of Creditors’ case filed in the Fayette District Court, Lexington, Kentucky, Civil Action No. 09-C-04320 whereby James H. Frazier, III was named the Assignee of the assets of AppFuels, AppCoalHold, AppEnv, AppHold, KanDevCorp, and SouthEagle.

1.1.2 “Administrative Claim” shall mean any claim that is defined in Section 503(b) of the Code as being an “administrative expense” and granted priority under Code Section 507(a)(2) and including: (i) a Claim for any cost or expense of administration in connection with the Bankruptcy Cases, including, without limitation, any actual, necessary cost or expense of preserving the Debtors’ estates incurred on or before the Effective Date; and (ii) all fees and charges assessed against the Debtor’s estate under Chapter 123 of Title 28 of the United States Code.

1.1.3 “AppHold Interests” shall mean the stock or other ownership interests held by Energy Coal Resources, Inc. (and any other entity directly or indirectly) in AppHold.

1.1.4 “Allowed Administrative Claim” shall mean an Administrative Claim for which the Court has entered a Final Order allowing such claim as an Administrative Claim.

1.1.5 “Allowed Claim” shall mean (a) a Claim allowed by a Final Order, (b) a Claim as to which a timely and proper proof of claim or application for payment has been filed, and as to which proof of claim or application for payment no objection has been made within the time allowed for the making of objections or (c) a Claim allowed under the Plan, notwithstanding any objection filed thereto. Except as set forth in the preceding sentence, no Claim shall be deemed or constitute an Allowed Claim unless a proof of claim has been filed in accordance with the Court’s Final Order [Doc. No. 1264] entered on August 23, 2010 which specifically required all creditors to file a proof of claim notwithstanding the provisions of Bankruptcy Rule 3003. Interest accrued after the Petition Date of the Bankruptcy Cases shall not be part of any Allowed Claim, except as required under the Plan or permitted by law. “Allowed Claim,” when followed by a reference to a Claim of a certain kind, shall mean an Allowed Claim of that kind of Claim.

1.1.6 “AppCoalHold” shall mean Appalachian Coal Holdings, Inc., a Debtor in a Chapter 11 Case (No. 09-10405) before this Court.

1.1.7 “AppEnv” shall mean Appalachian Environmental, LLC, a Debtor in a Chapter 11 Case (No. 09-10374) before this Court.

1.1.8 “AppFuels” shall mean Appalachian Fuels, LLC, a Debtor in a Chapter 11 Case (No. 09-10343) before this Court.

1.1.9 “AppHold” shall mean Appalachian Holding Company, Inc., a Debtor in a Chapter 11 Case (No. 09-10372) before this Court.

1.1.10 “AppPremFuels” shall mean Appalachian Premium Fuels, LLC, a Debtor in a Chapter 11 Case (No. 09-10373) before this Court.

1.1.11 “AppPremFuels Committee” shall mean the Official Committee of Unsecured Creditors appointed by the Office of the United States Trustee in the AppPremFuels Bankruptcy Case.

1.1.12 “AppPremFuels Committee Counsel” shall mean the law firm of Miller, Griffin and Marks, PSC, Lexington, KY, appointed by the Court on September 28, 2010 as counsel for the committee of Unsecured Creditors in the AppPremFuels Case.

1.1.13 “AppPremFuels Funds” shall mean those funds that are attributable to the liquidation of AppPremFuels assets as determined pursuant to the formula set forth in Article IV.A of the Disclosure Statement, which is incorporated into this Plan pursuant to this reference the same as if it were set forth in its entirety herein, and the net collected proceeds from the prosecution of the Causes of Action attributable to AppPremFuels as AppPremFuels interests may appear.

1.1.14 “Assets” shall mean all cash or other property held by or on behalf of the CLO as of the Effective Date, all cash or other property recovered by or on behalf of the Liquidating Trustee after the Effective Date, the Causes of Action and any other asset as defined by Code § 541 with respect to all Debtors, but shall exclude any and all mining permits issued by any state or federal regulatory agency. “Assets” shall not include the AppPremFuels Funds.

1.1.15 “Bankruptcy Cases” or “Cases” shall mean the Debtors’ jointly administered cases under Chapter 11 of the Code, but after joint administration is terminated shall mean the separate Bankruptcy Case for a respective Debtor.

1.1.16 “Bankruptcy Code” or “Code” shall mean the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, as amended from time to time, as applicable to the Bankruptcy Cases.

1.1.17 “Business Day” shall mean a day other than a Saturday, Sunday or other day on which national commercial banks are authorized or required by law to close.

1.1.18 “Causes of Action” shall mean, without limitation, any and all of the Debtors’ rights, claims and actions, including (i) avoidance actions arising under or authorized by Code §§ 510, 542 through 551 and 553; (ii) applicable state law avoidance claims; (iii) actions against Professionals to recover fees and expenses that are disallowed by the Court, if any; (iv) the adversary proceedings filed in the Cases; (v) those claims belonging to the Committee pursuant to the Standing Orders; and (vi) any statutory or common law causes or choses of action, rights, suits, damages, judgments, and demands whatsoever of the Debtors, whether known or unknown, now existing or hereafter arising, in law, equity or otherwise, based in whole or in part upon any act or omission or other event occurring of fact prior to the Petition Date(s); and all of the foregoing that arose during the course of the Bankruptcy Cases through the Effective Date.

1.1.19 “Claim” shall have the same meaning as set forth in Code §101(5), if such claim against the Debtors were in existence on or as of the Petition Date. The term Claim, when preceded by a reference to a Class of Claims, shall mean a Claim of that Class, except Insurance Claims.

1.1.20 “CLO” shall mean the Court-appointed Chief Liquidating Officer of the Debtors, James H. Frazier, III.

1.1.21 “Committee” shall mean the Official Committee of Unsecured Creditors appointed by the Office of the United States Trustee in the AppFuels Bankruptcy Case.

1.1.22 “Confirmation” shall mean the entry of an Order by the Court approving or confirming this Plan.

1.1.23 “Confirmation Date” shall mean the date upon which an Order of Confirmation is entered by the Court confirming this Plan.

1.1.24 “Confirmation Order” or “Order of Confirmation” shall mean the order of the Bankruptcy Court confirming the Plan.

1.1.25 “Court” shall mean the United States Bankruptcy Court for the Eastern District of Kentucky, Ashland Division, within which the Bankruptcy Cases are pending.

1.1.26 “Creditor” or “Claimant” shall mean the owner or holder of a Claim.

1.1.27 “CTB” shall mean Community Trust Bank, Inc.

1.1.28 “CTB Collateral” shall mean the certificates of deposit pledged to CTB to secure obligations in connection with the CTB Letters of Credit.

1.1.29 “CTB Letters of Credit” shall mean the letters of credit issued by CTB to Lyndon to secure obligations pursuant to the Lyndon Bonding Agreement.

1.1.30 “CTB Loan Documents” shall mean the loan documents executed by Debtors and delivered to CTB in connection with the CTB Letters of Credit.

1.1.31 “Debtors” shall mean AppFuels, AppHold, AppPremFuels, AppEnv, KanDevCorp, AppCoalHold, and SouthEagle. The singular term “Debtor” shall mean that certain Debtor identified in the context of the sentence or paragraph utilizing such term.

1.1.32 “Disallowed Claim” shall mean a Claim, or any portion thereof, that has (a) been disallowed by a Final Order; (b) been withdrawn by a Creditor; (c) been scheduled by any of the Debtors but as to which no proof of Claim has been timely filed with the Court pursuant to any Final Order of the Court; or (d) not otherwise been deemed timely filed under any pre-existing bar claims dates entered by Court Orders during the pendency of the Bankruptcy Cases.

1.1.33 “Disclosure Statement” shall mean the disclosure statement, described in Code §1125 in respect to the Plan, including all exhibits and appendices, amendments and modifications thereto, as finally approved by the Bankruptcy Court for use in the solicitations of the votes of the Classes for or against Confirmation of the Plan.

1.1.34 “Disputed Claim” shall mean a Claim or a portion of a Claim which is not an Allowed Claim or a Disallowed Claim on the Effective Date or thereafter.

1.1.35 “Effective Date” shall mean fourteen (14) days following the date of the Confirmation Order, unless the Confirmation Order is stayed pending appeal, or, if a stay of the Confirmation Order is in effect, then the first Business Day after the stay is vacated.

1.1.36 “Employee Medical Claim” shall mean any Claim accorded priority treatment pursuant to Code §507(a)(5), except to the extent that each Claim exceeds the cap set forth in the aforesaid statute, in which case the excess amount above the cap shall be an Unsecured Claim.

1.1.37 “Employee Wage Claim” shall mean any Claim accorded priority treatment pursuant to Code §507(a)(4), except to the extent that such employee’s claim exceeds the cap set forth in the aforesaid statute, in which case the excess amount above the cap shall be an Unsecured Claim.

1.1.38 “Final Order” shall mean an order or judgment of the Court which (a) shall not have been reversed, stayed, modified or amended and for which the time for appeal, or to seek review or rehearing, shall have expired and as to which no appeal or petition for review, rehearing or petition for certiorari is pending, (b) if appealed, shall have been affirmed and no further hearing, appeal or petition for certiorari can be taken or granted, or (c) shall not be subject to a stay, provided, however, that no Order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Federal Rule of Civil Procedure 60 or Bankruptcy Rule of Procedure 9024 may be filed with respect to such order

1.1.39 “Heritage Bank” shall mean Heritage Bank of Ashland, Inc. in Ashland, Kentucky.

1.1.40 “Heritage Bank Collateral” shall mean the property, if any, pledged to Heritage Bank to secure obligations in connection with the Heritage Bank Letter of Credit.

1.1.41 “Heritage Bank Letter of Credit” shall mean the Letter of Credit issued by Heritage Bank to Lyndon to secure obligations pursuant to the Lyndon Bonding Agreement.

1.1.42 “Heritage Bank Loan Documents” shall mean the loan documents executed by Debtors and delivered to Heritage Bank in connection with the Heritage Bank Letter of Credit.

1.1.43 “Island Fork Permits” shall mean Permit Nos. O-3029-92 and S-3016-93 issued by the West Virginia Parties.

1.1.44 “Insurance Claim” means any claim arising from an incident or occurrence that is or may be covered under the Debtors’ insurance policy or policies in effect prior to, at or after the Petition Date through the Effective Date.

1.1.45 “Intercompany Claims” shall mean all claims held by any one or more of the Debtors against any one or more of the other Debtors.

1.1.46 “Interest” or “Interests” shall mean the ownership rights of any Person in a Debtor.

1.1.47 “KanDevCorp” shall mean Kanawha Development Corporation, a Debtor in a Chapter 11 Case (No. 09-10375) before this Court.

1.1.48 “Kentucky Parties” shall mean the Commonwealth of Kentucky Environmental and Public Protection Cabinet and its successors which now or in the future have responsibility or jurisdiction to enforce Kentucky’s laws and regulations with respect to the Debtors’ coal mining activities pursuant to K.R.S. Chapters 224 and 350 and regulations promulgated in furtherance thereof, as well as any other statutes and regulations the Kentucky Parties have authority to enforce.

1.1.49 “Liquidating Trust” shall mean the trust established pursuant to Article 6.3 of this Plan.

1.1.50 “Liquidating Trust Agreement” shall mean the legal document creating the Liquidating Trust.

1.1.51 “Liquidating Trustee” shall be the Person acting as the trustee of the Liquidating Trust or any successor trustee thereof.

1.1.52 “Lyndon” shall mean Lyndon Property Insurance Company.

1.1.53 “Lyndon Adversary” shall mean that certain adversary action pending in the Court against Lyndon as Adversary Case No. 11-01004 styled *Official Committee of Unsecured Creditors v. Lyndon Property Insurance Company and Cumberland [sic] Surety, Inc.*

1.1.54 “Lyndon Bonding Agreement” shall mean that certain Agreement for Bond dated March 25, 2003, between Lyndon, AppFuels and Illinois Fuels, LLC and all amendments and related agreements, including but not limited to riders, bonds or guarantees.

1.1.55 “Lyndon Letters of Credit” shall mean any Letter of Credit held by Lyndon to secure AppFuels’ obligations under the Lyndon Bonding Agreements.

1.1.56 “Person” or “Persons” shall have that meaning as contained in Code §101(41).

1.1.57 “Petition Date” shall mean June 11, 2009, for AppFuels; June 26, 2009, for AppEnv, AppHold, AppPremFuels, and KanDevCorp; and July 7, 2009, for SouthEagle and AppCoalHold. An order for relief was entered on June 29, 2009 for AppFuels.

1.1.58 “Plan” shall mean this plan of orderly liquidation and distribution filed by the Debtors, the Committee and the AppPremFuels Committee in this Court, as it may be further amended, modified or supplemented from time to time as provided therein.

1.1.59 “Priority Claim” shall mean a claim entitled to priority pursuant to Code §507(a).

1.1.60 “Professional Claims” shall mean the fees and expenses allowed to the Professionals by the Court pursuant to Code §§ 327-331 and 503(b).

1.1.61 “Professionals” shall mean Bunch & Brock in its capacity as counsel for the Debtors; DelCotto Law Group, PLLC, in its capacity as counsel for the Committee; McBrayer, McGinnis, Leslie & Kirkland, PLLC, in its capacity as Special General Counsel for the Debtors; Development Specialists, Inc., in its capacity as a financial advisor to the Committee; Gess, Mattingly & Atchison, P.S.C., in its capacity as Special Conflicts Counsel to the Committee and Special Counsel to the Committee; Diamond McCarthy LLP as Special Litigation Counsel to the Committee; Miller Griffin & Marks, PSC, in its capacity as counsel for the Committee for Unsecured Creditors of AppPremFuels; and all attorneys, accountants, appraisers, examiners, consultants, realtors, and other professional Persons properly retained by the Debtors, the Committee and/or the AppPremFuels Committee, and approved by the Court under the Code, which Persons performed professional services for or on behalf of the Debtors, the Committee and/or the AppPremFuels Committee from the Petition Date through and including the Effective Date (with the exception of fees charged for preparation of and arguments for Professionals’ Claims), whose services and expenses are allowable by the Court under Code §330.



1.1.62 “Pro Rata” shall mean proportionately so that the ratio of the amount of the distribution or payment made on account of an Allowed Claim to the amount of distribution or payment made on account of all Allowed Claims of the Class in which the particular Allowed Claim is included, is the same as the ratio of the amount of such Allowed Claim to the total amount of all Allowed Claims in such Class.

1.1.63 “Reclamation Claims” shall mean all claims arising out of or relating to any legal obligation or legal duty of the Debtors to reclaim or perform remediation with respect to any real property for which the Debtor was the owner, permittee or was contractually obligated to perform reclamation work held by either the Kentucky Parties or the West Virginia Parties. This term, when preceded by either Kentucky or West Virginia, shall mean the Reclamation Claims of the referenced party.

1.1.64 “Remaining Alloy Permits” shall mean Permit Nos. O-38-84, O-14-81 and H-631 issued by the West Virginia Parties in respect of KanDevCorp’s prior operations in West Virginia.

1.1.65 “Schedules” shall mean those schedules and statements of financial affairs filed in the cases by the Debtors under Federal Rule of Bankruptcy 1007.

1.1.66 “Secured Claim” shall mean (a) a Claim secured by a lien or security interest in or on property of a Debtor, which lien or security interest is valid, perfected and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or other applicable non-bankruptcy law, and which is duly established in the Debtors’ Bankruptcy Cases, but only to the extent that such Claim does not exceed the value of the Debtors’ Assets which the Bankruptcy Court finds are valid collateral for such Claim or (b) a Claim that is allowed under the terms of this Plan as a Secured Claim.

1.1.67 “Secured Creditor” shall mean the owner or holder of a Secured Claim.

1.1.68 “SouthEagle” shall mean Southern Eagle Energy, LLC, a Debtor in a Chapter 11 Case (No. 09-10406) before this Court.

1.1.69 “Standing Orders” shall mean those orders entered by the Court [Doc. Nos. 907 and 1480] conferring standing upon to the Committee to prosecute and recover, *inter alia*, the Causes of Action.

1.1.70 “Tax Claims” shall mean Claims of any governmental entity for the payment of taxes accorded priority pursuant to Code § 507(a)(8). The term “Secured Tax Claims” shall mean those tax claims secured by valid liens on assets of a Debtor or the Debtors as of the Petition Date.

1.1.71 “Tax Creditor” shall mean the holder of a Tax Claim.

1.1.72 “Town Square Bank” shall mean the Town Square Bank, Inc. in Ashland, Kentucky.

1.1.73 “Town Square Bank Collateral” shall mean the certificates of deposit pledged to Town Square Bank by Debtors to secure obligations in connection with the Town Square Bank Letters of Credit.

1.1.74 “Town Square Bank Letters of Credit” shall mean the letters of credit issued by Town Square Bank to Lyndon to secure obligations pursuant to the Lyndon Bonding Agreement.

1.1.75 “Town Square Loan Documents” shall mean the loan documents executed by Debtors and delivered to Town Square Bank in connection with the Town Square Bank Letters of Credit.

1.1.76 “Trust Representative” shall mean that post-Effective Date representative(s) created by Plan Section 6.4, infra.

1.1.77 “Unknown Claim” shall mean a claim that was (a) neither listed nor scheduled in the Debtors’ Schedules filed in the Court and (b) such creditor had no notice or actual knowledge of the pendency of the Cases in time to comply with Court Orders relating to bar claims deadlines.

1.1.78 “Unsecured Claim” shall mean a Claim that is not entitled to secured status pursuant to Code § 506(a).

1.1.79 “Unsecured Creditor” shall mean the owner or holder of an Unsecured Claim.

1.1.80 “West Virginia Parties” shall mean the West Virginia Department of Environmental Protection and its successors which now or in the future have responsibility or jurisdiction to enforce West Virginia’s laws and regulations with respect to the Debtors’ coal mining activities pursuant to W. Va. Code 22-3-1 *et. seq.* and regulations promulgated in furtherance thereof, as well as any other statutes and regulations the West Virginia Parties have authority to enforce.

1.1.81 “West Virginia Permits” shall mean the Island Fork Permit, the Remaining Alloy Permits and the WV-1 Permits.

1.1.82 “WV-1 Permits” shall mean Permit Nos. 0-5006-03, S-5009-97, S-5016-94 and S-5019-00 issued by the West Virginia Parties to AppFuels in respect of Debtor’s prior operations at the WV-1 mine.

## ARTICLE II TREATMENT OF UNCLASSIFIED CLAIMS

2.1 Unclassified Claims: Unclassified Claims for all the Debtors' estates shall consist of Allowed Administrative Claims for AppFuels which shall be paid by the Liquidating Trustee and Allowed Administrative Claims for AppPremFuels which will be paid by the AppPremFuels Committee Counsel, and which shall be a carveout from any Secured Claim against the AppPremFuels Funds, as set forth in this Plan.

2.1.1 United States Trustee Fees: All U.S. Trustee fees due and owing for all Debtors shall be paid in full on or before the Effective Date by the CLO. Following the Effective Date, AppPremFuels Committee Counsel shall pay U.S. Trustee fees for AppPremFuels from the AppPremFuels Funds until its individual Case is converted, dismissed or closed, whichever occurs first. The Liquidating Trustee shall pay the post-Effective Date U.S. Trustee fees for AppFuels in the ordinary course as they are incurred until its Case is converted, dismissed or closed, whichever occurs first. Upon the Effective Date, the obligations to pay U.S. Trustees fees in the KanDevCo, AppCoalHold, AppHold, AppEnv and SouthEagle shall end and these Cases will be deemed "closed" for all purposes. The clerk of the Court shall take all appropriate steps to close these five listed Cases.

2.1.2 Administrative Claims: Each Claimant, other than Professionals, holding an Administrative Claim shall receive either: (i) with respect to Administrative Claims that are Allowed Administrative Claims on the Effective Date, the amount of such Claimant's Allowed Administrative Claim shall be paid in one cash payment on the Effective Date or as soon thereafter as is practicable; (ii) with respect to Administrative Claims that become Allowed Administrative Claims after the Effective Date, the amount of such Claimant's Allowed Administrative Claim shall be paid as soon as practicable following same becoming an Allowed Administrative Claim; or (iii) such other treatment agreed upon by the Liquidating Trustee or the AppPremFuels Committee Counsel and such Claimant. All Claimants seeking payment of Administrative Claims shall file their respective requests for allowance and payment thereof no later than thirty (30) days after the Effective Date. Claimants who do not file and serve a request for allowance and payment by the aforesaid bar date will be forever barred from asserting such Claims; provided, however, that Claimants who have previously had their Claims allowed by Court Order do not need to file any further request for allowance unless the amount they are seeking has increased subsequent to entry of said Order.

2.1.3 Professionals Claims: All Professionals seeking payment of Professional Claims shall file their respective requests for allowance and payment thereof no later than thirty (30) days after the Effective Date. Professionals who do not file and serve a request for allowance and payment by the aforesaid bar date will be forever barred from asserting such Claims; provided, however, that Professionals who have previously had their Claims Allowed by Court Order do not need to file any further Application or request for Allowance unless the amount they are seeking has increased subsequent to entry of said Order. Any Allowed Professional Claim shall be paid by the Liquidating Trust or AppPremFuels Committee Counsel, as appropriate, after entry of a Final Order allowing such Claim, before any distribution to those Claims treated under Article IV.

**ARTICLE III  
CLASSIFICATION OF CLAIMS AND INTERESTS**

3.1 Classification of AppFuels Claims and Interests: The following classification of Claims and Interests shall apply with regard to **AppFuels**:

3.1.1 AppFuels Class 1 (Kentucky Reclamation Claims): AppFuels Class 1 shall consist of all Allowed Reclamation Claims of the Kentucky Parties against AppFuels.

3.1.2 AppFuels Class 2 (West Virginia Reclamation Claims): AppFuels Class 2 shall consist of all Allowed Reclamation Claims of the West Virginia Parties, including Claims arising from the West Virginia Permits, against AppFuels.

3.1.3 AppFuels Class 3 (Lyndon Claim): AppFuels Class 3 shall consist of the Allowed Claim of Lyndon, arising from the Lyndon Bonding Agreement, against AppFuels.

3.1.4 AppFuels Class 4 (CTB Secured Claims): AppFuels Class 4 shall consist of the Allowed Secured Claims of CTB against AppFuels, secured by the CTB Collateral.

3.1.5 AppFuels Class 5 (Town Square Bank Secured Claim): AppFuels Class 5 shall consist of the Allowed Secured Claim of Town Square Bank against App Fuels, secured by the Town Square Collateral.

3.1.6 AppFuels Class 6 (Heritage Bank Secured Claim): AppFuels Class 6 shall consist of the Allowed Secured Claim of Heritage against AppFuels, secured by the Heritage Bank Collateral.

3.1.7 AppFuels Class 7 (All Other Secured Claims): AppFuels Class 7 shall consist of all other Allowed Secured Claims against AppFuels, not otherwise classified under this Article.

3.1.8 AppFuels Class 8 (Priority Employee Wage Claims): AppFuels Class 8 shall consist of all Allowed Employee Wage Claims against AppFuels.

3.1.9 AppFuels Class 9 (Priority Employee Medical Claims): AppFuels Class 9 shall consist of all Allowed Employee Medical Claims against AppFuels.

3.1.10 AppFuels Class 10 (Priority Tax Claims): AppFuels Class 10 shall consist of all Allowed Priority Tax Claims against AppFuels.

3.1.11 AppFuels Class 11 (Unsecured Claims): AppFuels Class 11 shall consist of all Allowed Unsecured Claims against AppFuels.

3.1.12 AppFuels Class 12 (Intercompany Claims): AppFuels Class 12 shall consist of Intercompany Claims against AppFuels.

3.1.13 AppFuels Class 13 (AppHold Interests): AppFuels Class 13 shall consist of the AppHold Interests in AppFuels.

3.2 Classification of AppPremFuels Claims and Interests: The following classification of Claims and Interests shall apply with regard to **AppPremFuels**:

3.2.1 AppPremFuels Class 1 (Kentucky Reclamation Claims): AppPremFuels Class 1 shall consist of all Allowed Reclamation Claims of the Kentucky Parties against AppPremFuels.

3.2.2 AppPremFuels Class 2 (West Virginia Reclamation Claims): AppPremFuels Class 2 shall consist of all Allowed Reclamation Claims of the West Virginia Parties, including Claims arising from the West Virginia Permits, against AppPremFuels.

3.2.3 AppPremFuels Class 3 [Intentionally Omitted]

3.2.4 AppPremFuels Class 4 (All Other Secured Claims): AppPremFuels Class 4 shall consist of all other Allowed Secured Claims against AppPremFuels not otherwise classified under this Article.

3.2.5 AppPremFuels Class 5 (Priority Wage Claim): AppPremFuels Class 5 shall consist of all Allowed Priority Wage Claims against AppPremFuels.

3.2.6 AppPremFuels Class 6 (Priority Employee Medical Claims): AppPremFuels Class 6 shall consist of all Allowed Priority Medical Claims against AppPremFuels.

3.2.7 AppPremFuels Class 7 (Priority Tax Claims): AppPremFuels Class 7 shall consist of all Allowed Priority Tax Claims against AppPremFuels.

3.2.8 AppPremFuels Class 8 (Unsecured Claims): AppPremFuels Class 8 shall consist of Allowed Unsecured Claims against AppPremFuels.

3.2.9 AppPremFuels Class 9 (Intercompany Claims): AppPremFuels Class 9 shall consist of Intercompany Claims against AppPremFuels.

3.2.10 AppPremFuels Class 10 (AppFuels Interests): AppPremFuels Class 10 shall consist of the ownerships Interests of AppFuels in AppPremFuels.

3.3 **KanDevCo** did not have any assets listed in its Schedules and/or did not realize any proceeds from the Debtors' liquidation sales so no classification of Claims and Interests is made with respect to KanDevCo.

3.4 **AppHold** did not have any assets listed in its Schedules and/or did not realize proceeds from the Debtors' liquidation sales so no classification of Claims and Interests is made with respect to AppHold.

3.5 **AppEnv** did not have any assets listed in its Schedules and/or did not realize proceeds from the Debtors' liquidation sales so no classification of Claims and Interests is made with respect to AppEnv.

3.6 **AppCoalHold** did not have any assets listed in its Schedules and/or did not realize proceeds from the Debtors' liquidation sales so no classification of Claims and Interests is made with respect to AppCoalHold.

3.7 **SouthEagle** did not have any assets listed in its Schedules and/or did not realize proceeds from the Debtors' liquidation sales so no classification of Claims and Interests is made with respect to SouthEagle.

#### **ARTICLE IV TREATMENT AND IMPAIRMENT OF CLASSIFIED CLAIMS**

4.1 Treatment of AppFuels Claims: On the respective dates set forth herein, or as soon as practicable following the date a classified claim becomes an Allowed Claim, whichever is later, the Liquidating Trustee shall make the following payments, undertake the considerations hereinafter set forth, and be obligated with respect to such Claims against AppFuels from the balance of the proceeds from the Assets.

4.1.1 AppFuels Class 1 Claims (Kentucky Parties Claims): The AppFuels Class 1 Claimants are unimpaired and Claimants in this Class shall not be entitled to vote for or against the Plan. Upon entry of the Confirmation Order all claims of the Kentucky Parties against AppFuels and the Liquidating Trust are hereby forever disallowed and released in accordance with the Court's order approving the Debtors' settlement with the Kentucky Parties [Doc. No. 1341].

4.1.2 App Fuels Class 2 Claims (West Virginia Parties Claims): The AppFuels Class 2 Claimants are unimpaired and shall not be entitled to vote for or against the Plan. Any claim of the West Virginia Parties related to reclamation obligations of the Debtor have been fully satisfied by the assumption of liabilities by third parties and/or the transfer of any permit on which AppFuels was liable. Any remaining West Virginia Parties Reclamation Claims not treated previously shall be transferred to and become an AppFuels Class 9 Unsecured Claims.

4.1.3 AppFuels Class 3 Claim (Lyndon Claim): The AppFuels Class 3 Claimant holds a contingent claim pending the outcome of the Lyndon Adversary. The Claim of Lyndon shall be estimated at zero. Lyndon shall not be entitled to vote for or against the Plan unless the Court determines otherwise and Lyndon shall receive no distribution unless and until the Lyndon Claim becomes an Allowed Claim.

4.1.4 AppFuels Class 4 Claim (CTB Secured Claim): The AppFuels Class 4 Claimant shall be treated as follows:

- a. Impairment. The AppFuels Class 4 Claimant is not impaired because the parties have agreed to the following treatment in this Section 4.1.4. CTB shall be deemed impaired if the treatment is changed without its consent.
- b. Security Interest. The terms of the Court's Agreed Order of Adequate Protection Regarding Community Trust Bank's Letters of Credit [Doc. No. 307] are hereby incorporated herein (the "CTB Agreed Order"), which provides that CTB has a perfected secured claim in the CTB Collateral to secure claims against the CTB Letters of Credit, and "Expenses", as that term is defined in the CTB Agreed Order. CTB may continue to pay any CTB Expenses from the CTB Collateral as allowed by the CTB Agreed Order and the CTB Loan Documents by providing an invoice of Expenses to the Liquidating Trustee. If the expenses relate to the renewal fee for any CTB Letter of Credit or if the Liquidating Trustee raises no objection to the payment of the CTB Expenses then CTB may pay the CTB Expenses from the CTB Collateral. If the Liquidating Trustee does object to the payment of the CTB Expenses and the parties cannot resolve such objection within fifteen (15) days, then the matter must be submitted to the Bankruptcy Court for a final determination.
- c. Establishment of Escrow Account. On the last business day of the month in which the Effective Date falls, and every six months thereafter, CTB shall place all CTB Collateral in excess of the outstanding face amount of the CTB Letters of Credit in a separate deposit account (the "CTB Escrow Account"). CTB shall continue to have a lien on the CTB Escrow Account for the purposes allowed herein and the CTB Loan Documents without further action including filing in any government office.
- d. Return of CTB Collateral. If the Lyndon Adversary is resolved within thirty days after the Effective Date and the effect of such resolution is to release the CTB Letters of Credit, section 4.1.4(d) hereof is not required and CTB shall return all CTB Collateral pursuant to section 4.1.4(e) hereof. Otherwise, as long as any CTB Letters of Credit remains outstanding, on the date that is thirty days after the Effective Date, and every six months thereafter, CTB agrees to release from the CTB Escrow Account all funds in excess of the following: (a) the outstanding face amount of the CTB Letter of Credit; (b) plus an amount equal to the estimated fees on such CTB Letter of Credit for five years calculated as follows: the then existing CTB Letter of Credit times 2% times 5; (c) plus an aggregate of \$200,000.
- e. Final Resolution. When there is no longer an outstanding CTB Letter of Credit, CTB will release the CTB Collateral securing such CTB Letter of Credit to the Liquidating Trustee within fifteen (15) days. Upon release of the final CTB Letter of Credit, CTB will pay over any and all amounts being held in respect to paragraph (iv) above to the Liquidating Trustee.

- f. Notwithstanding section 6.14 of the Plan, no party, including the Debtors and the Liquidating Trustee, shall pursue any right to surcharge the CTB Collateral.
- g. Neither the Debtors' nor the Committee are aware of any claims against CTB for prepetition or post-petition actions through the Effective Date regarding the CTB Letters of Credit. This statement does not prevent the Liquidating Trustee from asserting claims against CTB that accrue after the Effective Date. Nothing contained herein shall be construed as having any bearing on the Lyndon Adversary.
- h. Rights Unchanged. This Plan does not otherwise alter or affect the rights or obligations of Community Trust Bank with respect to the CTB Collateral, CTB Letters of Credit and the CTB Loan Documents.

4.1.5 AppFuels Class 5 Claim (Town Square Bank Secured Claim): The AppFuels Class 5 Claimant holds a contingent claim pending the outcome of the Lyndon Adversary. The Claim of Town Square Bank shall be estimated at zero. Town Square Bank shall not be entitled to vote for or against the Plan unless the Court determines otherwise and Town Square Bank shall receive no distribution unless and until the Town Square Bank Secured Claim becomes an Allowed Claim. Nothing contained herein shall be construed as having any bearing on the Lyndon Adversary.

4.1.6 AppFuels Class 6 Claim (Heritage Bank Secured Claim): The AppFuels Class 6 Claimant holds a contingent claim pending the outcome of the Lyndon Adversary. The Claim of Heritage Bank shall be estimated at zero. Heritage Bank shall not be entitled to vote for or against the Plan unless the Court determines otherwise and Heritage Bank shall receive no distribution unless and until the Heritage Bank Secured Claim becomes an Allowed Claim. Nothing contained herein shall be construed as having any bearing on the Lyndon Adversary.

4.1.7 AppFuels Class 7 Claims (All Other Secured Claims): The AppFuels Class 7 Claimants are impaired and shall be entitled to vote for or against the Plan. Within forty-five (45) days of the Effective Date, the Liquidating Trustee shall either (a) provide the holder of an AppFuels Class 7 Claim notice of its intent to object to the proof of claim of said AppFuels Class 7 Creditor with any subsequent objection being governed by section 5.3 of this Plan or (b) pay the holder of an Allowed AppFuels Class 7 Claim the value of its Allowed AppFuels Class 7 Claim, from the Liquidating Trust at such time as funds are available.

4.1.8 AppFuels Class 8 Claims (Priority Employee Wage Claims): The AppFuels Class 8 Claimants are impaired and shall be entitled to vote for or against the Plan. After full payment of the AppFuels Class 7 Claims, all Allowed AppFuels Class 8 Claims shall be paid in full by the Liquidating Trust in amounts equal to their Allowed Claims, provided, however, if there are insufficient funds to pay all such Allowed Claims in full, then such Allowed Claims shall be paid Pro Rata at such time as funds are available.

4.1.9 AppFuels Class 9 Claims (Priority Employee Medical Claims): The AppFuels Class 9 Claimants are impaired and shall be entitled to vote for or against the Plan. If there are sufficient funds remaining in the Liquidating Trust after payment in full of AppFuels



Class 8, then all Allowed AppFuels Class 9 Claims shall be paid in full by the Liquidating Trust in amounts equal to their Allowed Claims, provided, however, if there are insufficient funds to pay all such Allowed Claims in full, then such Allowed Claims shall be paid Pro Rata at such time as funds are available.

4.1.10 AppFuels Class 10 Claims (Priority Tax Claims): The AppFuels Class 10 Claimants are impaired and shall be entitled to vote for or against the Plan. If there are sufficient funds remaining in the Liquidating Trust after payment in full of AppFuels Class 9, then all Allowed Priority Tax Claims shall be paid in full by the Liquidating Trust in amounts equal to their Allowed Claims, provided, however, if there are insufficient funds to pay all such Allowed Claims in full, then such Allowed Claims shall be paid Pro Rata at such time as funds are available.

4.1.11 AppFuels Class 11 Claims (Unsecured Claims): The AppFuels Class 11 Claimants are impaired and shall be entitled to vote for or against the Plan. Each holder of an Allowed Claim in AppFuels Class 11 shall receive Pro Rata payments from the Liquidating Trust following payment in full of the Allowed AppFuels Class 10 Claims at such time as funds are available.

4.1.12 AppFuels Class 12 Claims (Intercompany Claims): The AppFuels Class 12 Claimants are impaired, are deemed to have rejected the Plan, and the Claims in this Class shall be deemed disallowed. No property will be distributed to or retained by the AppFuels Class 12 Claimants and such Claims shall be treated pursuant to Plan §6.1, infra and pursuant to this Plan section.

4.1.13 AppFuels Class 13 Interests (AppFuels Interests): The AppFuels Class 13 AppFuels Interests are impaired and are deemed to have rejected the Plan. No property will be distributed to or retained by the holders of Interests in AppFuels Class 13 on account of such Interests, and upon the Effective Date, such Interests shall be nullified and any Claim related thereto shall be deemed disallowed.

4.2 Treatment of AppPremFuels Claims. AppPremFuels Committee Counsel shall distribute the AppPremFuels Funds to Persons holding Allowed Claims against AppPremFuels, including any Unclassified Claimants, in conformity with the terms of this Plan.

4.2.1 AppPremFuels Class 1 Claims (Kentucky Parties Claims): The AppPremFuels Class 1 Claimants are unimpaired and are therefore not entitled to vote for or against the Plan. Upon entry of the Confirmation Order all claims of the Kentucky Parties against AppPremFuels and the AppPremFuels Committee Counsel are hereby forever disallowed and released in accordance with the Court's order approving the Debtors' settlement with the Kentucky Parties [Doc. No. 1341].

4.2.2 AppPremFuels Class 2 Claims (West Virginia Parties Claims): The AppPremFuels Class 2 Claimants are unimpaired and are therefore not entitled to vote for or against the Plan. Any claim of the West Virginia Parties related to reclamation obligations of the Debtor have been fully satisfied by the assumption of liabilities by third parties and/or the

transfer of any permit on which AppPremFuels was liable. Any remaining West Virginia Reclamation Claims not treated previously shall be transferred to and become an AppPremFuels Class 8 Unsecured Claim as to this Debtor.

4.2.3 AppPremFuels Class 3 Claim – [Intentionally Omitted].

4.2.4 AppPremFuels Class 4 Claims (All Secured Claims): The AppPremFuels Class 4 Claimants are impaired and shall be entitled to vote for or against the Plan. Within forty-five (45) days of the Effective Date, the AppPremFuels Committee Counsel shall either (a) provide the holder of a AppPremFuels Class 4 Claim notice of its intent to object to the proof of claim of said AppPremFuels Class 4 Creditor with any subsequent objection being governed by section 5.3 of this Plan or (b) pay the holder of an Allowed AppPremFuels Class 4 Claim the value of its Allowed AppPremFuels Class4 Claim, from the AppPremFuels Funds at such time as funds are available and in conformity with the terms of this Plan.

4.2.5 AppPremFuels Class 5 Claims (Priority Employee Wage Claims): The AppPremFuels Class 5 Claimants are impaired and shall be entitled to vote for or against the Plan. After full payment of the AppPremFuels Class 4 Claims, all Allowed AppPremFuels Class 5 Claims shall be paid in full by the AppPremFuels Committee Counsel in amounts equal to their Allowed Claim, provided, however, if there are insufficient funds to pay all such Allowed Claims in full, then such Allowed Claim shall be paid Pro Rata at such time as funds are available.

4.2.6 AppPremFuels Class 6 Claims (Priority Employee Medical Claims): The AppPremFuels Class 6 Claimants are impaired and shall be entitled to vote for or against the Plan. If there are sufficient funds remaining with the AppPremFuels Committee Counsel after payment in full of AppPremFuels Class 5, then all Allowed AppPremFuels Class 6 Claims shall be paid in full in and by the AppPremFuels Committee Counsel in amounts equal to their Allowed Claim, provided, however, if there are insufficient funds to pay all such Allowed Claims in full, then such Allowed Claim shall be paid Pro Rata at such time as funds are available.

4.2.7 AppPremFuels Class 7 Claims (Priority Tax Claims): The AppPremFuels Class 7 Claimants are impaired and shall be entitled to vote for or against the Plan. If there are sufficient funds remaining with the AppPremFuels Committee Counsel after payment in full of AppPremFuels Class 6, then all Allowed AppPremFuels Class 7 Claims shall be paid in full in and by the AppPremFuels Committee Counsel in amounts equal to their Allowed Claim, provided, however, if there are insufficient funds to pay all such Allowed Claims in full, then such Allowed Claim shall be paid Pro Rata at such time as funds are available.

4.2.8 AppPremFuels Class 8 Claims (Unsecured Claims): The AppPremFuels Class 8 Claimants are impaired and shall be entitled to vote for or against the Plan. Each holder of an Allowed Claim in AppPremFuels Class 8 shall receive Pro Rata payments from the AppPremFuels Committee Counsel following payment in full of the Allowed AppPremFuels Class 7 Claims at such time as funds are available.

4.2.9 AppPremFuels Class 9 Claims (Intercompany Claims): The AppPremFuels Class 9 Claimants are impaired, and are deemed to have rejected the Plan upon the Effective Date, the Claims in this Class shall be deemed disallowed. No property will be distributed to or retained by the holders of Allowed Claims in AppPremFuels Class 9 and such Claims shall be treated pursuant to Plan §6.1, infra and pursuant to this Plan section.

4.2.10 AppPremFuels Class 10 Interests (AppFuels Interests): The AppPremFuels Class 10 Interests owned by AppFuels are impaired and are deemed to have rejected the Plan. No property will be distributed to or retained by the holders of Interests in AppPremFuels Class 10 on account of such Interests, and upon the Effective Date such Interests shall be nullified and any Claim relating thereto shall be deemed disallowed.

4.3 **KanDevCorp** did not have any assets listed in its Schedules and/or did not realize proceeds from the Debtors' liquidation sales so no classification of Claims and Interests is made with respect to its liabilities. This Debtor may be dissolved at such time as the Liquidating Trustee, in its sole discretion, believes it appropriate to do so. On the Effective Date, this Debtor's case shall be deemed closed and its case removed from the Court's active docket. There will be no distribution to this Debtor's Creditors.

4.4 **AppHold** did not have any assets listed in its Schedules and/or did not realize proceeds from the Debtors' liquidation sales so no classification of Claims and Interests is made with respect to its liabilities. This Debtor may be dissolved at such time as the Liquidating Trustee, in its sole discretion, believes it appropriate to do so. On the Effective Date, this Debtor's case shall be deemed closed and its case removed from the Court's active docket. There will be no distribution to this Debtor's Creditors.

4.5 **AppEnv** did not have any assets listed in its Schedules and/or did not realize proceeds from the Debtors' liquidation sales so no classification of Claims and Interests is made with respect to its liabilities. This Debtor may be dissolved at such time as the Liquidating Trustee, in its sole discretion, believes it appropriate to do so. On the Effective Date, this Debtor's case shall be deemed closed and its case removed from the Court's active docket. There will be no distribution to this Debtor's Creditors.

4.6 **AppCoalHold** did not have any assets listed in its Schedules and/or did not realize proceeds from the Debtors' liquidation sales so no classification of Claims and Interests is made with respect to its liabilities. This Debtor may be dissolved at such time as the Liquidating Trustee, in its sole discretion, believes it appropriate to do so. On the Effective Date, this Debtor's case shall be deemed closed and its case removed from the Court's active docket. There will be no distribution to this Debtor's Creditors.

4.7 **SouthEagle** did not have any assets listed in its Schedules and/or did not realize proceeds from the Debtors' liquidation sales so no classification of Claims and Interests is made with respect to its liabilities. This Debtor may be dissolved at such time as the Liquidating Trustee, in its sole discretion, believes it appropriate to do so. On the Effective Date, this Debtor's case shall be deemed closed and its case removed from the Court's active docket. There will be no distribution to this Debtor's Creditors.

**ARTICLE V**  
**PROVISIONS APPLICABLE TO ALL OR SPECIFIC CLASSES OF CLAIMS**

5.1 Bar Date for Claims: The bar dates below have been or hereby are established. The Claim of any Person who failed or fails to timely file a proof of claim is hereby disallowed and shall be forever barred from having an Allowed Claim herein. The Claim of any Creditor who failed to file, or fails to timely file a proof of claim by the appropriate bar date shall receive no payment or distribution from the Liquidating Trust or from the AppPremFuels Committee Counsel and shall be forever barred from attempting to seek payment from any Debtors' Assets or the Liquidating Trust without the need for any Court Order.

5.1.1 Employee Medical Claims. The bar date for asserting Employee Medical Claims expired on October 25, 2010 pursuant to a Court order [Doc. No. 1264].

5.1.2 Employee Wage Claims. The bar date for asserting Employee Wage Claims expired on March 21, 2011 pursuant to Court notice [Doc. No. 1399].

5.1.3 All Other Claims. The bar date for asserting all Claims, other than Employee Medical Claims, rejection claims (defined below in Section 5.1.4) and Tax Claims, expired on March 21, 2011 pursuant to Court notice [Doc. No. 1399].

5.1.4 Rejection Claims. The bar date for asserting Claims arising from the rejection of executory contracts or unexpired leases expired on March 14, 2010 pursuant to a Court order [Doc. No. 830].

5.1.5 Tax Claims. Any holder of a Tax Claim who has yet to file a Claim shall file a Claim no later than thirty (30) days after the Effective Date or such other date as may be fixed by a Court Order.

5.1.6 [Intentionally Omitted].

5.1.7 Unknown Claims.

5.1.7.1 Establishment of a Procedure for Notice for Unknown Claims. Within thirty days after the Effective Date, the Liquidating Trustee and the AppPremFuels Committee Counsel shall place on advertisement in the *Lexington Herald Leader* in Lexington, Kentucky and *The Charleston Gazette* in Charleston, West Virginia which shall state as follows:

NOTICE TO CREDITORS OF APPALACHIAN FUELS, LLC  
AND APPALACHIAN PREMIUMS FUELS, LLC: Your rights  
may have been affected by a Chapter 11 Plan confirmed by the  
United States Bankruptcy Court, Eastern District of Kentucky,  
Lexington, Kentucky. You may have the right to file a claim  
against one of these Debtors but you must act within thirty days of

this notice to preserve your rights. For more information, go to <https://sites.google.com/site/appfuelsch11/>.

The thirty day time period for Unknown Claims to be filed shall be the Unknown Claims Bar Date. The proof of claim shall be accompanied by the Creditor's affidavit establishing its qualification as an Unknown Claim as such term is defined in Plan §1.1.77.

**5.1.7.2 Effect of Unknown Claims Bar Date.** A Creditor holding an Unknown Claim must file its Claim before the Unknown Claim Bar Date or its Claim shall be disallowed in all respects.  **Holders of an Unknown Claim that do not file a proof of claim by the Unknown Claim Bar Date shall be forever barred from asserting such Claims and from seeking any recovery from the Liquidating Trust or the AppPremFuels Committee Counsel.**

5.2 **Satisfaction of Claims:** The payments, distributions and other treatment provided in respect to each Allowed Claim in this Plan shall be in complete satisfaction and release of such Allowed Claim.

5.3 **Objections to Claims:** At all times prior to the Effective Date, the Debtors and the Committee shall be entitled to object to Claims. Subsequent to the Effective Date, the Liquidating Trustee or, with regard to the Claims against AppPremFuels, the AppPremFuels Committee Counsel, shall be entitled to object to Claims. Any such objections to Claims shall be filed and served on or before the later of (i) two years after the Effective Date, (ii) any date as may be fixed by the Court, or (iii) 60 days after the filing of an applicable proof of claim.

5.4 **Estimation of Claims:** At any time (a) prior to the Effective Date, the Debtors and the Committee, and (b) subsequent to the Effective Date, the Liquidating Trustee or the AppPremFuels Committee Counsel, may request that the Court estimate any contingent or unliquidated Claim to the extent permitted by Code §502(c). If the Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on the Claim, as determined by the Court. If the estimated amount constitutes a maximum limitation on the Claim, the Debtors, the Committee, the Liquidating Trustee or the AppPremFuels Committee Counsel, as applicable, may elect to pursue supplemental proceedings to object to the ultimate allowance of the Claim. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Court.

5.5 **No Distributions Pending Allowance:** Notwithstanding any other provision hereof or as contained in the Liquidating Trust Agreement, if any Claim or any portion of a Claim is a Disputed Claim, no payment or distribution provided hereunder shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim. Pursuant to Code §502(d), no payment or distribution provided hereunder shall be made to any entity unless and until the entity has repaid the amount for which it is liable or turned over to the Liquidating Trustee any property that is recoverable under Code §§ 522(i), 542, 543, 550, or 553, including without limitation, all transfers avoidable pursuant to Code §§ 547 and 548.

5.6 Distribution to Unsecured Claims: Subject to any applicable restrictions in this Plan, after payment to all prior classes and resolution of all Disputed Claims, the Liquidating Trustee and/or the AppPremFuels Committee Counsel, as applicable, shall commence distribution to the holders of the Allowed Unsecured Claims. Notwithstanding any provision of this Plan, the Disclosure Statement, or the Confirmation Order to the contrary, distributions shall not be required to be made unless and until the aggregate cash available for distribution, as determined in the Liquidating Trustee's sole discretion (or, in the case of AppPremFuels, the AppPremFuels Committee Counsel's sole discretion), is sufficient to warrant such a distribution.

5.7 Authority to Compromise and Settle Disputed Claims without Court Approval: On and after the Effective Date, pursuant to Federal Rule of Bankruptcy Procedure 9019(b), the Liquidating Trustee (or, in the case of AppPremFuels, the AppPremFuels Committee Counsel) shall have the sole authority to compromise, settle, or otherwise resolve or withdraw any objections to Disputed Claims without approval of the Court.

## ARTICLE VI MEANS OF IMPLEMENTATION OF PLAN

6.1 No Substantive Consolidation or Recharacterization of Intercompany Claims and Interests: Notwithstanding other prior orders of the Court, there shall be no substantive consolidation of the Debtors under this Plan. The joint administration of the Debtors' Cases set forth in Doc. No. 155 shall be deemed rescinded on the Effective Date and the Claims filed against each Debtor and the rights and remedies of each separate creditor against each Debtor shall be treated in its separate case in conformity with the terms of this Plan. On the Effective Date, all Intercompany Claims shall be deemed disallowed in conformity with Plan §4.1.12, supra, except as otherwise provided for under this Plan. **Confirmation of the Plan shall forever bar the holder of an Interest and Intercompany Claim in any of the Debtors from seeking an allowance of such Interests or Claim.**

6.2 Transfer of the AppPremFuels Funds: On the Effective Date, the CLO shall deliver or pay over to the AppPremFuels Committee Counsel all of the AppPremFuels Funds in his possession. The AppPremFuels Committee Counsel shall have all rights, responsibilities and duties of the Liquidating Trustee and the Liquidating Trust as set forth in this Plan, solely with respect to the AppPremFuels Funds and Creditors of AppPremFuels, except neither AppPremFuels nor the AppPremFuels Committee Counsel shall have any right to (i) pursue any Causes of Action, (ii) assert any claim against any of the other Debtors, their Professionals, or the Liquidating Trust, (iii) dissolve AppPremFuels or (iv) make any claim against Lyndon, the CTB Collateral, the Heritage Bank Collateral, or the Town Square Bank Collateral. Post-Confirmation, the Liquidating Trustee shall pay to the AppPremFuels Committee Counsel any net litigation proceeds that are attributed to AppPremFuels, as AppPremFuels' interests may appear. All such Assets transferred to the Liquidating Trust shall be subject to the Allowed Claims of the AppFuels' Creditors and the terms of this Plan and the AppPremFuels Funds transferred to the AppPremFuels Committee Counsel shall be subject to the Allowed Claims of the AppPremFuels' Creditors and the terms of this Plan. AppPremFuels Committee Counsel is appointed as representative of the AppPremFuels estate under Code §1123(b)(3)(B), but shall not

be subject to the provisions of Plan §§ 6.3, 6.6, 6.7.4, 6.7.6 and 6.12 of this Plan, except as otherwise specifically provided in such sections.

6.3 Establishment and Funding of Liquidating Trust: On the Effective Date, the Debtors shall execute the Liquidating Trust Agreement in substantially the form attached as Exhibit 2 to the Disclosure Statement. The Liquidating Trust Agreement shall be incorporated into this Plan as if set out fully herein. The Liquidating Trustee shall be authorized and directed to take all steps necessary in furtherance of this Plan and fulfillment of the purpose of the Liquidating Trust. On the Effective Date, the Assets and all rights to the Assets shall be delivered, transferred to or paid over to the Liquidating Trust. Thereafter all such Assets shall be vested in and owned by the Liquidating Trust.

6.3.1 Purpose of Liquidating Trust: The Liquidating Trust is hereby established for the purposes of pursuing the Causes of Action, receiving and administering the Assets, and liquidating the Assets transferred to it in furtherance of the Plan for the sole benefit of the holders of beneficial interests in the Liquidating Trust and making distributions to holders of AppFuels' Allowed Claims. The Liquidating Trustee shall not continue or engage in the conduct of any trade or business. The Liquidating Trust shall be the transferee of the Assets of AppFuels with the right to act in its name and shall not be deemed to be the same legal entity as AppFuels.

6.3.2 Appointment of the Liquidating Trustee. Development Specialists, Inc. shall be the trustee of the Liquidating Trust and is appointed as the representative of the AppFuels estate under Code §1123(b)(3)(B). In the event that Development Specialists, Inc. ceases to serve as Liquidating Trustee for any reason, a successor shall be designated pursuant to the Liquidating Trust Agreement. Upon the designation of the Liquidating Trustee or successors, the identity and connections of said trustee, if any, with the Debtors, their creditors, any parties in interest in the Bankruptcy Cases or the United States Trustee shall be disclosed in writing and filed with the Court.

6.3.3 Powers of the Liquidating Trustee. The Liquidating Trustee shall have the powers, rights and interests of a trustee under Code §1106. The powers of the Liquidating Trustee shall include all rights and powers necessary and appropriate to implement the provisions of the Liquidating Trust Agreement and to administer the Liquidating Trust, including, without limitation, the power to: (i) administer each Debtor's estate (but not AppPremFuels) and the Assets; (ii) prosecute and collect all Causes of Action and distribute the net collected proceeds of any recovery attributable to AppPremFuels to the AppPremFuels Committee Counsel; (iii) make all distributions in accordance with this Plan to the extent such distributions are to be made from the Assets, including the payment of United States Trustee fees accruing in the AppFuels Case after the Effective Date until the closing or dismissal of the AppFuels Case; (iv) retain professionals and other agents; (v) take such steps as are reasonable and necessary to accomplish the Liquidating Trust's purpose; (vi) file all post-Effective Date tax returns on behalf of the Liquidating Trust; and (vii) otherwise perform the functions and take actions provided for or permitted in the Plan, the Liquidating Trust Agreement, all as provided in and subject to the terms and provisions of the Plan, the Confirmation Order and the Liquidating Trust Agreement. The Liquidating Trustee shall be responsible for paying or satisfying all liabilities including: (a) any post-Effective Date expenses necessary or appropriate on the part of

the Liquidating Trust in respect of consummation of the Plan; (b) any post-Effective Date expenses incurred for the benefit of or in connection with the operation of the Liquidating Trust; and (c) any other obligations of the Liquidating Trust expressly set forth in the Plan or the Liquidating Trust Agreement. Without limiting the foregoing, from and after the Effective Date, the Liquidating Trust shall dispose of the assets of the Liquidating Trust in accordance with the provisions of the Plan, the Confirmation Order and the Liquidating Trust Agreement.

6.3.4 Investment Powers: The right and power of the Liquidating Trustee to invest the Assets or any other cash transferred to the Liquidating Trust and any income earned by the Liquidating Trust, shall be limited to the right and power to invest such cash in a manner consistent with the Liquidating Trust Agreement or applicable order of the Court and may be further limited to avoid the Liquidating Trust from becoming subject to the Investment Company Act of 1940; provided, however, that the Liquidating Trust may expend the cash of the Liquidating Trust: (i) as reasonably necessary to meet contingent liabilities and to maintain the value of the assets of the Liquidating Trust during the liquidation; (ii) to pay reasonable administrative expenses of the Liquidating Trust that are incurred (including, but not limited to, any taxes imposed on the Liquidating Trust or fees and expenses in connection with the administration and liquidation of the assets of the trust); and (iii) to satisfy other liabilities incurred or assumed by the Liquidating Trust (or to which the assets of the Liquidating Trust are otherwise subject) in accordance with the Plan or the Liquidating Trust Agreement.

6.3.5 Liability of Liquidating Trustee and AppPremFuels Committee Counsel. Notwithstanding any other provision of the Plan, the Liquidating Trustee and the AppPremFuels Committee Counsel shall not be held personally liable, directly or indirectly, for any decision, action, inaction, activity or inactivity arising from the exercise of its duties as Liquidating Trustee or as the AppPremFuels Committee Counsel, except for fraud, gross negligence or gross mismanagement.

6.4 Dissolution of the Committee and Appointment of Trust Representative: The Committee shall be dissolved upon the Effective Date, except that the Debtors, the Committee, AppPremFuels Committee Counsel, or their Professionals or any other interested party may appear at any hearing to consider applications for final allowances of compensation and reimbursement of expenses and to prosecute any objections to such applications, if applicable. The dissolution of the Committee shall have no impact on litigation initiated on or before the Effective Date. Upon the Liquidating Trustee's designation under the Liquidating Trust Agreement, a Trust Representative shall be created. The Liquidating Trustee shall have the authority to appoint a total of three Trust Representatives, each of whom shall be an Unsecured Creditor of AppFuels or a representative of an Unsecured Creditor of AppFuels. In the event the Liquidating Trustee appoints three Trust Representatives, then each Trust Representative shall be entitled to one vote on matters that are presented to the Trust Representative for decision. The Trust Representative shall supervise the Liquidating Trust and the Liquidating Trustee as set forth in the Liquidating Trust Agreement. The Trust Representative shall continue to serve until the termination of the Liquidating Trust. The Trust Representative may resign at any time, in which event the Liquidating Trustee shall have the option of appointing a successor Trust Representative, who shall be an Unsecured Creditor or representative of an Unsecured Creditor of AppFuels.



6.5 Cessation of the Conduct of Business of the Debtors; Post-Effective Date Involvement of Professionals: Upon and after the Effective Date, the CLO, other officers, directors, employees, agents or other representatives of the Debtors will have no rights to operate or liquidate the Debtors' businesses. After the Effective Date, the Liquidating Trustee shall have full and complete power to act on behalf of AppFuels and the AppPremFuels Committee Counsel will have full and complete power to act on behalf of AppPremFuels, except as such powers are limited by the provisions of this Plan. The Confirmation Order shall constitute an Order of the Court pursuant to Code §1107(a) limiting the rights, powers and duties of the officers, directors, employees, agents or other representatives of the Debtors, except as provided herein and in the Trust Agreement. The Confirmation Order shall constitute an Order of withdrawal of all Professionals employed by the Debtors as of the Effective Date, except for McBrayer, McGinnis, Leslie and Kirkland, PLLC who may continue to serve as special counsel to the Liquidating Trustee. After the Effective Date, the DelCotto Law Group, PLLC, Development Specialists, Inc., Gess, Mattingly & Atchison, P.S.C. and Diamond McCarthy LLP shall continue to serve as counsel or other professionals to the Liquidating Trustee unless and until such time as the Liquidating Trustee retains alternative counsel or professionals pursuant to Section 6.10 of the Plan. Also after the Effective Date, Miller Griffin & Marks P.S.C. shall continue to serve as AppPremFuels Committee Counsel.

6.6 Tax Treatment of the Liquidating Trust. Under the terms provided for in the Liquidating Trust Agreement, each Debtor, the Liquidating Trustee and the holders of beneficial interests in the Liquidating Trust will treat the Liquidating Trust as a "liquidating trust" within the meaning of Treasury Regulation § 301.7701-4(d) and any comparable provision of state or local law. Consistent with this treatment, the transfer of assets to the Liquidating Trust will be characterized solely for tax purposes as a transfer of the assets to the holders of Allowed Claims followed by a transfer of the assets by the holders of Allowed Claims to the Liquidating Trust in exchange for beneficial interests in the trust; the holders of beneficial interests in the Liquidating Trust will be treated solely for tax purposes as the grantors and deemed owners of the trust; and the Liquidating Trustee and the holders of beneficial interests in the Liquidating Trust will use consistent valuations for the transferred assets for tax purposes. The Liquidating Trustee shall be authorized to take any action necessary to maintain compliance with this regulation or its successor that does not contradict the terms of the Liquidating Trust Agreement, this Plan or the Confirmation Order.

6.7 Distributions from the Liquidating Trust (and AppPremFuels Funds). All distributions from the Liquidating Trust to the holders of interests in the Liquidating Trust (and all distributions of the AppPremFuels Funds by the AppPremFuels Funds Committee Counsel) shall be made in accordance with such claimants' respective Pro Rata shares of the beneficial interests held therein at such time and in such amounts as shall be determined by the Liquidating Trustee pursuant to the Liquidating Trust Agreement and/or this Plan. The Liquidating Trustee shall make distributions as when appropriate; however, the Liquidating Trustee shall cause the Liquidating Trust to retain sufficient funds as reasonably necessary for the Liquidating Trust to: (a) meet contingent liabilities and maintain the value of its assets during liquidation; (b) pay reasonable expenses of administering the Liquidating Trust that have been incurred (including, but not limited to, any taxes imposed on the Liquidating Trust or fees and expenses in connection

with the post-Effective Date administration and liquidation of the assets of the trust); and (c) satisfy other post-Effective Date liabilities incurred by the Liquidating Trust in accordance with the Plan. Subject to Section 6.12 (or Section 6.13 in the case of AppPremFuels), the distributions from the Liquidating Trust shall be subject to the following provisions:

6.7.1 Interim Distribution: Interim distributions to a Class of Claims under the Plan will occur as soon as practicable after (i) all objections to any such Claims have been resolved or reserved for, and (ii) Claims in prior classes have been paid or satisfactory reserves for payment of such Claims and other fees and/or charges required or permitted to be paid under the Plan and/or the Liquidating Trust Agreement have been made.

6.7.2 Final Distribution: Final Distribution to Creditors under the Plan will occur as soon as practicable after (i) all of the assets (including Causes of Action) are liquidated and all proceeds of the liquidation are deposited into the Liquidating Trust or the AppPremFuels Funds, as their interests may appear, and (ii) all objections to Claims have been resolved.

6.7.3 Reporting Duties; Income Tax and Related Information: The CLO shall file (or cause to be filed) any statements, returns or disclosures relating to the Debtors that are required by any governmental unit or applicable law, including any tax returns for the pre-Effective Date period, due from the Debtors. The Liquidating Trustee and/or AppPremFuels Committee Counsel shall pay from the Liquidating Trust and/or the AppPremFuels Funds their respective taxes and costs of the preparation of the CLO's fiduciary tax returns.

6.7.4 Duty to Provide Tax Information by Beneficiaries of the Liquidating Trust: The Liquidating Trustee shall be authorized to collect such tax information from the holders of beneficial interests in the Liquidating Trust (including, without limitation, social security numbers and/or other tax identification numbers) as in its sole discretion deems necessary to effectuate the Plan. A distribution may be withheld until such time as a holder of a beneficial interest in the Liquidating Trust provides the necessary information to comply with any withholding requirements of any governmental unit. Any property so withheld will then be paid to the appropriate authority. If a holder of a beneficial interest in the Liquidating Trust fails to provide the information necessary to comply with any withholding requirements of any governmental unit within six (6) months from the date of first notification to the holder of a beneficial interest in the Liquidating Trust of the need for such information, then such distribution shall be treated as an unclaimed distribution in accordance with this Plan.

6.7.5 Disclaimer: The Liquidating Trustee, the AppPremFuels Committee Counsel and its agents and attorneys are under no duty to take any action to either (a) attempt to locate any Creditor, (b) obtain an executed Internal Revenue Service Form W-8 or W-9 from any Creditor, or (c) to issue IRS 1099 forms to the Creditors.

6.7.6 Monitoring of Disbursements. The Trust Representative and the U.S. Trustee shall have the right to monitor the collection, accounting, treatment and distribution

of all proceeds by the Liquidating Trustee. The Liquidating Trustee shall make available its books and records to the Trust Representative and the U.S. Trustee at any reasonable time, upon reasonable written notice; provided however, the Liquidating Trustee shall have no obligation to share any information that may be subject to any privilege or may hinder the prosecution of any Cause of Action absent an appropriate order from the Bankruptcy Court.

6.7.7 Delivery of Distributions; Undeliverable and Unclaimed Distributions: All distributions under the Plan on Allowed Claims shall be sent to the address of a Creditor as listed on their proof of claim unless the Liquidating Trustee or the AppPremFuels Committee Counsel, as appropriate, has been notified in writing of a change of address. Six months after any distribution date, all undeliverable or unclaimed payments or distributions made to any Creditor under the Plan, including but not limited to, un-negotiated checks or drafts, shall revert to the Liquidating Trust or the AppPremFuels Funds to be redistributed pursuant to the terms of this Plan, and shall be forfeited as to the affected Creditors. Any Creditor whose payment is forfeited under this provision will thereafter be treated as having a Disallowed Claim, and the holder of any such Claim shall not be entitled to any other or further distribution under this Plan on account of such Claim. IT SHALL BE THE RESPONSIBILITY OF EVERY CREDITOR TO KEEP THE LIQUIDATING TRUSTEE OR THE APPPREMFUELS COMMITTEE COUNSEL, AS APPROPRIATE, ADVISED OF ANY CREDITOR'S CHANGE OF ADDRESS.

6.7.8 Minimum Distributions: If a distribution to be made to a Creditor holding an Allowed Claim would be \$50.00 or less in the aggregate, notwithstanding any contrary provision of this Plan, no such distribution will be made to such holder by the Liquidating Trustee or the AppPremFuels Committee Counsel.

6.7.9 Set Off and Recoupment Rights: Except as specifically provided in the Plan, no Person shall retain any contractual or statutory right to set off or to recoup any asset in which the Liquidating Trust or the AppPremFuels Committee Counsel has an interest in satisfaction of that Claimant's prepetition Claim. Any right to set off or to recoup a Claim against an Asset, any asset of the Liquidating Trust or the AppPremFuels Funds that is not specifically retained by a Creditor is waived and forever barred.

6.7.10 Allocations of Distributions Between Principal and Interest: To the extent that any Allowed Tax Claim entitled to a distribution under the Plan by the Liquidating Trust or the AppPremFuels Committee Counsel is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall be allocated first to the principal amount of the Claim (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claim, to accrued but unpaid interest, unless otherwise specifically set forth herein.

6.7.11 No Interest on Claims: Except as specifically provided for Section 6.7.10, interest shall not accrue on any Claims and no Claimant shall be entitled to interest accruing on or after the Petition Date from the Liquidating Trust or the AppPremFuels Funds.

6.8 [Intentionally Omitted].

6.9 Expenses of the Liquidating Trust. The obligations and expenses of the Liquidating Trust shall be funded by the Assets and any proceeds from the liquidation thereof. The Liquidating Trustee shall cause the Liquidating Trust to retain sufficient funds as reasonably necessary for the Liquidating Trust to: (a) pay the claims mentioned in Article II, supra and to meet contingent liabilities and to maintain the value of its assets during liquidation; (b) pay reasonable expenses of administering the Liquidating Trust that have been incurred (including, but not limited to, any taxes imposed on the Liquidating Trust or fees and expenses in connection with the post-Effective Date administration and liquidation of the assets of the trust); and (c) satisfy other post-Effective Date liabilities incurred by the Liquidating Trust in accordance with the Plan. Except as needed to preserve any privilege or confidential information, the Liquidating Trustee shall furnish an annual budget of said necessary expenses to the Trust Representative and to any Interested Party (defined as a Creditor with a beneficial interest in the Liquidating Trust whose Claim is not subject to a counterclaim or offset, and such Creditor is not involved in pending litigation with the Liquidating Trust) requesting same.

6.10 Professionals and Employees: The Liquidating Trust, with the consent of the Trust Representative, and the AppPremFuels Committee Counsel may from time to time retain any professionals, including but not limited to, attorneys, financial advisors or accountants, as may be appropriate under the circumstances. The Liquidating Trustee and the AppPremFuels Committee Counsel shall, in the ordinary course of business and without the necessity for any approval by the Court, pay on behalf of the Liquidating Trust and AppPremFuels Committee Counsel the reasonable and necessary fees and expenses of such professionals retained by the Liquidating Trust and the AppPremFuels Committee Counsel, including but not limited to Miller, Griffin & Marks, PSC. The Liquidating Trust and AppPremFuels Committee Counsel may also hire such employees as the Liquidating Trustee and the AppPremFuels Committee Counsel deems appropriate under the circumstances.

6.11 Conflicts Between Trust and Plan. If there arises any inconsistencies between the Liquidating Trust Agreement provisions and the provisions of the Plan, the provisions of the Plan shall control.

6.12 Termination of the Liquidating Trust. The Liquidating Trust shall terminate its existence upon the occurrence of the earlier of: (a) the liquidation, administration and distribution of its assets in accordance with the Plan and the full performance of all other duties and functions set forth in the Plan and the Liquidating Trust Agreement; or (b) the fifth anniversary of the date of the formation of the Liquidating Trust, subject to one or more finite extensions approved by the Court; but in no instance shall the Liquidating Trustee unduly prolong the existence of the Liquidating Trust. If, at the time of termination, there are undistributed funds remaining in the Liquidating Trust and the amount of those funds does not economically justify distribution to Creditors, the Liquidating Trustee, with the consent of the Trust Representative, may distribute those remaining funds to an Internal Revenue Service qualified non-profit charity of its choice with operations in Kentucky and/or West Virginia, so long as it complies with Code §347.

6.13 Termination of the AppPremFuels Estate. If, at the time of the final distribution

of the AppPremFuels Funds, there are undistributed funds remaining and the amount of those funds does not economically justify distribution to Creditors, notwithstanding the provisions of Code §347, the AppPremFuels Committee Counsel may distribute those remaining funds to an Internal Revenue Service qualified non-profit charity of its choice with operations in Kentucky and/or West Virginia.

6.14 Surcharge: If any Creditor claims a security interest in the proceeds of any asset or any other cash on deposit in any of the Debtors' accounts as of the Effective Date, the Liquidating Trustee and the AppPremFuels Committee Counsel shall, pursuant to Code §506(c), be entitled to surcharge such claimed collateral for the payment of all Allowed Administrative Claims, the initial funding of the Liquidating Trust and the AppPremFuels Funds, and all subsequent costs of implementing and performing the Plan without further order of the Court.

6.15 ABC Action. Upon agreement between the Liquidating Trustee and James H. Frazier, III, in his capacity as Assignee, the ABC Action may be dismissed by the Assignee.

6.16 Transfer and Prosecution of Causes of Action. Upon the Effective Date, all Causes of Action shall be, and hereby are transferred, reserved, retained and vested in the Liquidating Trust for the benefit of the Debtors' Creditors, for prosecution on behalf of all of the Debtors estates in the name of the Liquidating Trust. All Causes of Action shall survive and continue Post-Confirmation, free and clear of all liens, claims, interests, encumbrances, defenses of *res judicata*, waiver, laches and estoppel, for investigation, prosecution, enforcement, settlement, abandonment, adjustment, or collection by the Liquidating Trust for the benefit of the Debtors' Creditors in conformity with the terms of this Plan.

6.17 Notice to Targets of Causes of Action. All Creditors and other parties in interests are hereby expressly advised and notified that the Liquidating Trust shall have the right to investigate, prosecute, enforce, settle, adjust, collect, or otherwise dispose of the Causes of Action. **ALL CREDITORS, PERSONS, ENTITIES, AND OTHER PARTIES WHO RECEIVED DIRECTLY OR INDIRECTLY, PAYMENTS, OFFSETS, RECOUPMENTS AND/OR REBATES, OR TRANSFERS OF PROPERTY FROM THE DEBTORS WITHIN THE ONE (1) YEAR PERIOD PRECEDING THE PETITION DATE OR WITHIN SUCH LONGER PERIOD OF TIME AS MAY APPLY UNDER APPLICABLE LAW INCLUDING, WITHOUT LIMITATION, PERSONS INCLUDED IN THE LIST OF TARGETS OF CAUSES OF ACTION, ATTACHED AS EXHIBIT 3 TO THE DISCLOSURE STATEMENT (AND INCORPORATED HEREIN BY THIS REFERENCE, THE SAME AS IF SET FORTH AT LENGTH HEREIN), ARE HEREBY NOTIFIED THAT THEY MAY BE SUBJECT TO SUIT TO RECOVER ANY PREFERENCES, FRAUDULENT TRANSFERS, OR OTHER AVOIDABLE TRANSFERS AND TO PURSUE ANY OTHER CAUSES OF ACTION.** The inclusion in or omission of a Person in Exhibit 3 to the Disclosure Statement does not mean that a decision has been made to assert, or not to assert, a Cause of Action against such Person. In addition, all officers and current and former officers, directors, shareholders, members, employees, partners, investors, agents, attorneys, accountants, equity holders, responsible parties and any other professional Person of the Debtors, their affiliates, or their parents are hereby notified that they may be subject to an action under applicable law as a result of

any action or inaction, decision or lack of decision or transaction or non-transaction, made or incurred pre-petition that resulted, directly or indirectly, in harm to one or more of the Debtors. The Committee has filed lawsuits against the listed defendants as set out in Exhibit 3 to the Disclosure Statement and such claims and causes of action (as now asserted or as amended henceforth) are to be transferred, retained and enforced by the Liquidating Trust. The Committee, for the benefit of the Liquidating Trust and the AppPremFuels Fund, as AppPremFuels interests may appear, has also retained and preserved for enforcement and prosecution potential claims and causes of action (including, but not limited to, negligence, professional malpractice, fraud, breach of fiduciary duty, aiding & abetting breach of fiduciary duty, civil conspiracy, unjust enrichment, fee disgorgement, preference, and fraudulent transfer) against pre-petition professionals arising out of their relationship and/or engagements with the Debtors. The foregoing disclosure is intended to be descriptive and shall not be construed as a limitation on the type of action or potential targets subject to prosecution by the Committee.

6.18 Reservation of Causes of Action Beyond Confirmation. The Debtors and the Committee specifically reserve the Causes of Action to the Liquidating Trust and expressly reserve such rights to survive beyond Confirmation, the finality of Confirmation, and all other legal effects of Confirmation, provided, however, this reservation shall not mean and shall not be construed to mean that the exclusion of any Person from Exhibit 3 in the Disclosure Statement, frees, releases or exonerates that Person from Causes of Action, and the Liquidating Trust and its attorneys shall have the right to investigate, pursue, prosecute and collect any unknown, but later discovered, Causes of Action against any Person, specifically including the right to add parties to existing adversaries as discovery in those proceedings uncovers additional parties that have received avoidable transfers or have taken acts that have harmed the Debtors.

6.19 Notice in Confirmation Order. The Court shall include in the Confirmation Order appropriate provisions incorporating the terms set forth in Sections 6.16 through 6.18, including but not limited to, the survival of the Causes of Action from the defenses of *res judicata*, waiver, laches, and estoppel; the survival of any other unknown but later discovered cause of action after Confirmation; and the approval of a grant of derivative jurisdiction for the Liquidating Trust to prosecute the Causes of Action.

6.20 Prosecution and Temporary Disallowances by Liquidating Trust. The Claims of a target of a Cause of Action shall be subject to the denial of distribution provisions set forth in Section 5.5, supra, as pertains to the distributions made by the Liquidating Trustee.

6.21 Documents and Privileges. On the Effective Date, the Debtors shall (i) irrevocably transfer, assign and deliver to the Liquidating Trust any and all the right, title and interest in and to any and all papers, documents, maps, records, files, or other communications, whether in paper or electronic format, in its possession or in the possession of its professionals or custodians; and (ii) irrevocably transfer and assign all of their respective rights, title and interests in and to any attorney client privilege, work product privilege or other privilege or immunity attaching to any documents or communications (whether written or oral) associated with the Claims and Causes of Action transferred to the Liquidating Trust (collectively, "Privileges"), all of which shall vest in the Liquidating Trustee, in trust, and, consistent with Code §

1123(b)(3)(B), for the benefit of the Liquidating Trust Beneficiaries.

6.22 Discretion to Pursue or Settle. The Liquidating Trustee, with the consent of the Trust Representative as more fully defined in the Liquidating Trust Agreement, shall have discretion to pursue or not to pursue, to settle or not to settle, or to try or not to try, and/or to appeal or not to appeal the Causes of Action as it determines in the exercise of its business judgment and without any further approval of the Court.

6.23 Payment Over to Liquidating Trustee. All collections of proceeds from prosecution of the Causes of Action shall be paid or turned over to the Liquidating Trustee. Pursuant to Plan Section 6.2, *supra*, the Liquidating Trustee shall pay or turn over to the AppPremFuels Committee Counsel the net litigation proceeds from the collections on the litigation of the Causes of Action that are attributable to AppPremFuels, as AppPremFuels' interests may appear.

6.24 Insurance Policies. Any of the Debtors' insurance policies which provide liability or indemnity coverage to directors, officers, and/or employees with respect to all past, present or future actions, suits, and proceedings against the Debtors or their past or present directors, officers, and/or employees shall remain in full force and effect for their prescribed terms. Nothing contained herein shall constitute or be deemed a waiver of any Cause of Action that the Debtors or their respective estates may hold against any entity, including, without limitation, the insurer under any of the Debtors' policies of insurance. Nothing in this paragraph shall be interpreted to be an indemnification or guarantee for the benefit of any defendant in the Causes of Action.

6.25 Distributions Relating to Allowed Insurance Claims. Payments from the Debtor's insurance carrier(s) to a Claimant on an Allowed Insurance Claims shall be deemed to be in full satisfaction of such Creditor's Claim, which Claim shall be disallowed upon receipt by such Creditor of any insurance policy proceeds. Nothing contained herein shall constitute or be deemed a waiver of any Cause of Action that the Debtors may hold against any Person, including, without limitation, insurers under any policies of insurance for any wrongful settlement or non-settlement decisions, or any reason whatsoever.

6.26 Stay of Pending Litigation. Except to the extent that (i) relief from stay has previously been granted or (ii) any Person waives its claim against the Liquidating Trust and/or the AppPremFuels Funds to pursue only any Insurance Claims, then on the Effective Date all prepetition lawsuits, litigation, administrative actions or other proceedings, judicial or administrative, against any of the Debtors or their Assets, shall be permanently stayed, except to the extent that such Debtors' names, as necessary parties under applicable procedural rules, may be used but the judgment shall not be collectible from the Debtors, the Committee, the Liquidating Trust, the AppPremFuels Committee or the AppPremFuels Funds. Except as set forth in this Article, the entry of the Confirmation Order shall have no effect on any insurance coverage of the Debtors with respect to any Claim. The Debtors, the Committee, the Liquidating Trustee and/or the AppPremFuels Committee Counsel reserve the right to seek approval and enforcement of an alternative

dispute resolution process for the resolution of any Claim or Insurance Claim. The foregoing shall not be deemed consent to such a process by the Debtors, the Committee, the Liquidating Trustee and/or the AppPremFuels Committee Counsel, or as a waiver of any right to oppose the imposition of such a process by the Debtors, the Committee, the Liquidating Trustee, or the AppPremFuels Committee Counsel by any Person.

**ARTICLE VII  
EXECUTORY CONTRACTS AND LEASES**

7.1 Rejection of Executory Contracts and Unexpired Leases: Except as otherwise provided in the Confirmation Order or this Plan, on the Effective Date all executory contracts and unexpired leases that existed prepetition between the Debtors and any Person shall be deemed rejected and their resulting rejection claims shall be Unsecured Claims with respect to the appropriate Debtor or Debtors.

**ARTICLE VIII  
VOTING AND REQUEST FOR PLAN CONFIRMATION**

8.1 Voting Procedure: ACCEPTANCE OR REJECTION OF THE PLAN WILL BE DETERMINED BASED UPON THE BALLOTS OF THE CREDITORS HOLDING ALLOWED CLAIMS THAT ACTUALLY VOTE ON THE PLAN. THEREFORE, IT IS IMPORTANT THAT CLAIMANTS EXERCISE THEIR RIGHT TO VOTE TO ACCEPT OR REJECT THE PLAN.

8.2 Classes Entitled to Vote on the Plan: Except as otherwise provided in this Plan, all Creditors who have an Impaired Claim are entitled to vote to accept or reject the Plan. Article IV of this Plan identifies those Classes which are or are not impaired as well as those Classes permitted to vote for or against the Plan, those Classes deemed to have accepted the Plan, and those Classes deemed to have rejected the Plan

8.3 Request for Confirmation: The filing of this Plan in Court shall constitute and be treated as a motion by the Plan proponents for the Court to confirm this Plan.

**ARTICLE IX  
MISCELLANEOUS PLAN PROVISIONS**

9.1 Effectuating Documents; Exemption from Certain Transfer Taxes: The Debtors, the Liquidating Trust and the AppPremFuels Committee Counsel are hereby authorized to execute, deliver, file or record such documents, contracts, releases and other agreements, and take all such further action as may be necessary, to effectuate and further evidence the terms of this Plan. Pursuant to Code §1146(c), the delivery of any instrument or transfer under, and furtherance of, or in connection with, the Plan, including but not limited to deeds, bills of sale,



assignments, or other instruments of transfer, shall not be subject to any stamp tax, real estate tax, or similar transfer tax.

9.2 Closing of the Cases: After the Effective Date, the Liquidating Trustee and the AppPremFuels Committee Counsel, as appropriate, shall expeditiously move to close the Cases or shall seek dismissal thereof, if either is so allowed by the Court. Any closing or dismissal of any Case shall be subject to the following conditions authorized by Code § 349(b): (a) said dismissal or closing shall not alter, amend, revoke or supersede the terms of the confirmed Plan; (b) all rights of the Debtors, Creditors or any other Person treated under the Plan shall remain unaffected by said dismissal; (c) the terms of the confirmed Plan shall be binding on all Persons; (d) all orders previously entered by the Court, unless altered by the Plan, shall remain in full force and effect; and (e) the Court shall retain all jurisdiction set forth herein.

9.3 Modification of Plan: The Debtors, the Committee and the AppPremFuels Committee may jointly propose amendments to or modifications of this Plan under Code §1127 at any time prior to the Confirmation and may jointly revoke or withdraw the Plan at any time prior to the Confirmation Hearing. After the Effective Date, the Liquidating Trustee and the AppPremFuels Committee Counsel may jointly remedy any defects or omissions and may reconcile any inconsistencies in this Plan or in the Confirmation Order in such manner as may be necessary to carry out the purposes and intent of this Plan so long as the interests of the Creditors are not materially and adversely affected.

9.4 Sufficiency of Copies of Confirmation Order: Upon Confirmation of this Plan, a true and correct copy of the Confirmation Order shall be legally sufficient evidence of the terms, provisions and effects of this Plan for all purposes in any subsequent judicial proceeding or official record.

9.5 Binding Effect: The rights and obligations of any Person named or referred to in this Plan shall be binding upon, and shall inure to the benefit of, the heirs, successors, and/or assigns of such Person.

9.6 Notice of Default: In the event of any alleged default under the Plan or the Liquidating Trust Agreement, any Claimant or party-in-interest must give a written default notice to the Liquidating Trustee and/or the AppPremFuels Committee Counsel, specifying the nature of the default. Upon receipt of the default notice, the Liquidating Trustee and/or the AppPremFuels Committee Counsel shall have thirty (30) days thereafter to cure such default. If such default has not been cured within the applicable time period, the default may be brought to the attention of the Court for appropriate court action.

9.7 No Admissions or Waivers: Neither the filing of this Plan or the Disclosure Statement (as either may be modified or amended) nor the taking of any action, or the failure to take any action, by the Debtors, the Committee, the AppPremFuels Committee or a Creditor with respect to the Plan or Disclosure Statement is, or shall be deemed, an admission or waiver of any of the Debtors', their estates, or the Committee's or the AppPremFuels Committee's rights or defenses. In the event Confirmation does not occur or the Plan does not become effective, no statement contained herein or in the Disclosure Statement may be used or relied on in any

manner as against the Debtors, their estates, the Committee or the AppPremFuels Committee in any suit, action, proceeding or controversy within or outside of the Bankruptcy Cases. The Debtors, their estates, the AppPremFuels Committee and the Committee further reserve any and all of their respective rights against all Persons in the event the Plan is not confirmed or does not become effective.

9.8 Quarterly Reports; Final Report: The Liquidating Trustee shall file with the U.S. Trustee all quarterly reports and timely pay in full, all required U.S. Trustee fees, until such time as the AppFuels' case is closed or dismissed and serve copies of the same on all such parties requesting a copy of same. The AppPremFuels' Committee Counsel shall file with the U.S. Trustee all quarterly reports and timely pay in full, all required U.S. Trustee fees, until such time as the AppPremFuels' case is closed or dismissed and serve copies of the same on all such parties requesting a copy of same. Upon the termination of the Liquidating Trust, the Liquidating Trustee shall file a final report of distribution with the Court and timely pay in full, all required U.S. Trustee fees,; upon the exhaustion of the AppPremFuels Funds, the AppPremFuels Committee Counsel shall file a final report of distribution with the Court and timely pay in full, all required U.S. Trustee fees.

9.9 Retiree Benefit Plans: The Debtors have no retiree benefit plans, funds or programs as defined in Code § 1114(d), for the purpose of providing payments for retired employees and their spouses and dependants.

9.10 Reference to Pleadings: All references to docket entries or pleadings in this Plan shall refer to docket entries in the case of Appalachian Fuels, LLC, Case No. 09-10343, except as otherwise specifically provided herein

## ARTICLE X EFFECT OF PLAN CONFIRMATION, RELEASES, AND INJUNCTIONS/STAYS

10.1 Subordination Rights: The classification and manner of satisfying all Claims and Interests and the respective distributions and treatments hereunder take into account and/or conform to the relative priority and rights of the Claims in each Class of the Debtors in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, Code § 510(b) or otherwise, and any and all such rights are settled, compromised and released pursuant to the Plan. The Confirmation Order shall permanently enjoin, effective as of the Effective Date, all persons and entities from enforcing or attempting to enforce any such contractual, legal and equitable subordination rights satisfied, compromised and settled in this manner.

10.2 Injunctions: **Except as otherwise provided in the Confirmation Order, the entry of the Confirmation Order shall constitute an injunction against all Persons from taking any actions to commence or continue any action or proceeding that arose before the Effective Date against or affecting the Liquidating Trust or the Assets or against the AppPremFuels Funds. The Confirmation Order will permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively or otherwise,**

**of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to the Plan except as provided for in the Plan.**

10.3 Exculpation for Post-Petition Events and Limitation of Liability: The CLO in his capacity as CLO of the Debtors, the Committee, the AppPremFuels Committee and any of their respective members and Professionals shall not have or incur any liability to, or be subject to any right of action by, the Debtors, the Liquidating Trustee, AppPremFuels Committee Counsel or any holder of a Claim or Interest, or any other party in interest or any of their respective agents, shareholders, employees, representatives, financial advisors, attorneys or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of, (a) any act taken or omitted to be taken on or after the Petition Date, (b) the Disclosure Statement, the Plan, and the documents necessary to effectuate the Plan, (c) the solicitation of acceptances and rejections of the Plan, (d) the Debtors' Bankruptcy Cases, (e) the administration of the Plan, (f) the distribution of property under the Plan, (g) any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or the Bankruptcy Cases, or (h) any sale pursuant to or after the Plan, and in all respects shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan.

## **ARTICLE XI RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Court shall retain such jurisdiction over any matter arising under the Bankruptcy Code, or arising in or related to the Chapter 11 Cases or the Plan after Confirmation and after the Effective Date, and any other matter or proceeding that is within the Court's jurisdiction pursuant to 28 U.S.C. § 1334 or 28 U.S.C. § 157, including, without limitation, jurisdiction: (a) to hear and determine all controversies relating to or concerning the classification or allowance of Claims, including Professional Fees, disputed, contingent, or unliquidated Claims; (b) to determine and fix all Claims arising from the rejection of any executory contracts or leases; (c) to hear any pending motions for rejection, assumption or assignment of any executory contract or lease and to fix and determine any amounts alleged due and owing thereunder in order to cure defaults; (d) to enable the Debtors, Committee, the AppPremFuels Committee Counsel or the Liquidating Trustee to commence all and consummate any proceedings which they may bring prior to the closing of the bankruptcy cases to set aside any liens or encumbrances, to recover any assets, or damages to which the Debtors, Committee, AppPremFuels Committee Counsel, or Liquidating Trustee may be entitled under applicable provisions of the Bankruptcy Code or other federal, state, or local law; (e) decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, including Causes of Action and objections to Claims, involving a Debtor, the Committee, or the AppPremFuels Committee that may be pending as of the Effective Date, or that may be filed by the Liquidating Trustee or the AppPremFuels Committee Counsel after the Effective Date; provided, however, the Liquidating Trustee reserves the right to prosecute Causes of Action in all proper jurisdictions; (f) to recover all Assets and properties of the Debtors, wherever located; (g) to permit amendments to the Schedules; (h) to make such orders as are necessary or appropriate to carry out the provisions of

this Plan, including ruling on motions regarding the liquidation of the Assets and the AppPremFuels Funds contemplated hereunder; (i) to modify this Plan pursuant to the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure at the request of the Liquidating Trustee or the AppPremFuels Committee; (j) to hear any matters regarding interpretation, implementation or consummation of the Plan and to correct any defect, cure any omission, or reconcile any inconsistency in this Plan or the Confirmation Order; (k) to decide issues concerning federal tax liability, reporting and withholding which may arise in connection with the Confirmation or consummation of this Plan; (l) to enter final decrees closing these Chapter 11 Cases. Nothing herein limits the Court's powers under Code §105 and Bankruptcy Rule 9011.

## ARTICLE XII NOTICES

Except as otherwise specified, all notices and requests shall be given by any written means, including but not limited to electronic mail, facsimile, first class mail, express mail or similar overnight delivery service and hand-delivery letters, and any such notices or requests shall be deemed to have been given when received. Notices shall be delivered as follows:

To the Liquidating Trustee:

Development Specialists, Inc.  
Attn: William A. Brandt, Jr.  
70 West Madison Street, Suite 2300  
Chicago, IL 60602-4250  
Facsimile: (312) 263-1180

With a copy to:

DelCotto Law Group PLLC  
Attn: T. Kent Barber, Esq.  
200 North Upper Street  
Lexington, KY 40507  
Facsimile: (859) 281-1179

To the AppPremFuels Committee Counsel:

Donald R. Rose, Esq.  
Miller Griffin & Marks  
271 W. Short Street, Suite 600  
Lexington, KY 40507  
Facsimile: (859) 259-1562

To Trust Representative:

The Dayton Power & Light Company  
c/o Judi, L. Sobecki, Senior Counsel  
1065 Woodman Drive  
Dayton, OH 45432

With a copy to:

Taft Stettinius & Hollister, LLP  
W. Timothy Miller, Esq.  
425 Walnut Street, Ste. 1800  
Cincinnati, OH 45202

APPALACHIAN FUELS, LLC

APPALACHIAN HOLDING COMPANY, INC.

APPALACHIAN PREMIUM FUELS, LLC.

APPALACHIAN ENVIRONMENTAL, LLC.

KANAWHA DEVELOPMENT CORPORATION

APPALACHIAN COAL HOLDINGS, INC.

SOUTHERN EAGLE ENERGY, LLC.

By: /s/ James H. Frazier, III  
CHIEF LIQUIDATING OFFICER FOR  
THE DEBTORS

THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF APPALACHIAN FUELS, LLC

By: /s/ William H. Schwarzschild  
CHAIRMAN, COUNSEL FOR  
PHILIP MORRIS USA INC.

THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF APPALACHIAN PREMIUM  
FUELS, LLC

By: /s/ Dick Smith  
CHAIRMAN

TENDERED BY:

BUNCH & BROCK

/s/ W. Thomas Bunch, Esq.

W. Thomas Bunch, Esq.

Matthew B. Bunch, Esq.

Peter J.W. Brackney, Esq.

805 Security Trust Building

271 West Short Street

Lexington, Kentucky 40507

Telephone: (859) 254-5522

Facsimile: (859) 233-1434

wtb@bunchlaw.com

matt@bunchlaw.com

peter@bunchlaw.com

ATTORNEYS FOR THE DEBTOR



**EAST KENTUCKY POWER COOPERATIVE, INC.**  
**PSC CASE NO. 2012-00319**  
**FUEL ADJUSTMENT CLAUSE**  
**RESPONSE TO INFORMATION REQUEST**

**COMMISSION'S INFORMATION REQUEST AT HEARING HELD ON 10/11/12**  
**REQUEST 3**

**RESPONSIBLE PARTY: Ernest W. Huff**

**Request 3.** Refer to the confidential policy provided in the response to Request 15. Please provide a “track changes” version of this policy which shows the updates since the policy was last provided on September 13, 2011 in Case No. 2011-00246.

**Response 3.** EKPC makes a clarification to its response at hearing. Board Policy 404 was provided to the Commission in Case No. 2011-00246 and the policy provided in EKPC's responses filed on September 12, 2012 was, in fact, an update to that policy. A “track changes” version of Board Policy 404 is provided on pages 2 through 26 of this response.



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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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**EAST KENTUCKY POWER COOPERATIVE, INC.**

**PSC CASE NO. 2012-00319**

**FUEL ADJUSTMENT CLAUSE**

**RESPONSE TO INFORMATION REQUEST**

**COMMISSION'S INFORMATION REQUEST AT HEARING HELD ON 10/11/12**

**REQUEST 4**

**RESPONSIBLE PARTY: Craig A. Johnson**

**Request 4.** Refer to the response to Request 26. Please provide a description of all environmental permits received and any additional permits needed to burn, store, or handle tire-derived fuel.

**Response 4.** As indicated in the response to Request 26e, filed with the Commission on September 12, 2012, EKPC has received Title V air permits on both its circulating fluidized bed units at Spurlock Power Station. There are no additional permits needed to burn, store, or handle tire-derived fuel.



**EAST KENTUCKY POWER COOPERATIVE, INC.**  
**PSC CASE NO. 2012-00319**  
**FUEL ADJUSTMENT CLAUSE**  
**RESPONSE TO INFORMATION REQUEST**

**COMMISSION'S INFORMATION REQUEST AT HEARING HELD ON 10/11/12**  
**REQUEST 5**

**RESPONSIBLE PARTY: Ernest W. Huff and Ann F. Wood**

**Request 5.** Please provide a position paper that states the reasons why EKPC should be allowed to include alternative fuels, which include tire-derived fuels, in its FAC calculation.

**Response 5.** EKPC position paper on the inclusion of alternative fuels in the FAC calculation is included on pages 2 through 4 of this response.

EAST KENTUCKY POWER COOPERATIVE, INC.  
POSITION PAPER  
INCLUSION OF ALTERNATIVE FUELS IN THE FUEL ADJUSTMENT CLAUSE CALCULATION

Although the Commission's fuel adjustment clause regulation, 807 KAR 5:056, uses the term "fuel" only in the context of fossil fuels, EKPC respectfully requests the Commission to permit cost recovery for any fuels that are economic when compared to traditional fossil fuels. While EKPC agrees that there are compelling legal and policy reasons to strictly construe the meaning of "fuel" in the context of the fuel adjustment clause, doing so in this particular instance would lead to a result that falls short of the Commission's statutory mandate to prescribe "fair, just and reasonable" rates. For the reasons set forth herein, EKPC respectfully suggests that cost recovery of economic fuels from biomass resources and tire-derived products is consistent with the spirit of the FAC regulation and the Commission's ratemaking obligation.

EKPC acknowledges and agrees that there is Commission precedent stating that the FAC regulation "prescribes a strict procedure for accounting and reporting fuel costs."<sup>1</sup> EKPC also acknowledges that the Commission has previously stated that, "the [FAC] regulation makes no exceptions and provides for no variations or deviations from the stated reporting methodology."<sup>2</sup> The facts of this case make it readily apparent, however, that abiding by the strictest reading of the letter of the law leads to a conclusion that unreasonably violates the spirit of the FAC regulation and leads to a result that contradicts the expressed public policy of Kentucky.

As an example, the record of this case conclusively demonstrates that biomass resources and tire-derived products are economic fuel supplements and, from an operational point of view, compare very favorably to the exclusive use of traditional fossil fuel only.<sup>3</sup> There has been no suggestion that the costs in question would be excluded from EKPC's fuel adjustment clause if they were incurred in relation to a fossil fuel source. Thus, if the Commission denies EKPC the ability to recover its fuel costs for biomass resources and tire-derived product fuel, it will – in effect – be elevating the form of the FAC regulation over the substance of the FAC regulation.

Second, since the promulgation of the FAC regulation, the General Assembly has expressly adopted a public policy which favors and encourages the use of both biomass and

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<sup>1</sup> *In the Matter of: East Kentucky Power Cooperative's Request for a Declaratory Ruling on the Application of Administrative Regulation 807 KAR 5:056 to its Proposed Treatment of Non-Economy Energy Purchases*, Order, Case No. 2004-00430, p. 2 (March 21, 2005).

<sup>2</sup> *In the Matter of: East Kentucky Power Cooperative's Request for a Declaratory Ruling on the Application of Administrative Regulation 807 KAR 5:056 to its Proposed Treatment of Non-Economy Energy Purchases*, Order, Case No. 2004-00430, p. 5 (Feb. 7, 2005).

<sup>3</sup> See EKPC Response to Commission Information Request No. 26, filed on September 12, 2012.

tire-derived fuel in power generation. For example, one of the purposes of the Kentucky Incentives for Energy Independence Act is to “increase the production and sale of energy-efficient alternative fuels” and to generate electricity through “alternative methods such as...biomass resources.”<sup>4</sup> Similarly, KRS 224.50-850 states that “waste tires can be used...as tire-derived fuel...but that markets for these uses have not been adequately developed.” The statute then establishes a program under which the Energy Cabinet will work to develop such a market for tire-derived fuel. Should the FAC regulation be interpreted narrowly, it will contradict these much more recent policy directives of the General Assembly.

Third, EKPC points out that the concept of burning alternative fuels was fully brought to the Commission’s attention in the case seeking a Certificate of Public Convenience and Necessity for the Gilbert Unit in particular – and the Commission even went so far as to require EKPC to prepare a report on the feasibility of using alternative fuels at that unit as part of the order approving the CPCN.<sup>5</sup> The present application represents, in part, the culmination of the Commission’s own encouragement to EKPC to explore cost-effective alternative sources of fuel.

The Commission should also consider several additional legal authorities which suggest that granting the rate relief requested by EKPC is consistent with the statutory mandate to prescribe “fair, just and reasonable” rates. First, the legislative history of the FAC indicates that the narrow definition of “fuel” as used in the regulation was simply a reflection of the status of the industry at the time and did not reflect a reasoned and measured policy judgment as to the economic viability of various diverse fuel resources. The Commission has characterized the policy underlying the FAC by stating, “the basic purpose and intent was to provide a vehicle whereby the fluctuations in the cost of fuel could be recognized in rates in a timely fashion, thus avoiding the extensive regulatory lag associated with the filing of periodic general rate cases.”<sup>6</sup> This discussion of the legislative history of the FAC does not limit recoverable fuel costs only to “fossil fuels.” Moreover, the Commission’s characterization of the policy result which the FAC was intended to address suggests the Commission was principally concerned with the timeliness of fuel cost recovery – and not the precise nature of the fuel costs being recovered.

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<sup>4</sup> See KRS 154.27-020(3)(c)-(d).

<sup>5</sup> See *In the Matter of: An Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity, and a Certificate of Environmental Compatibility, for the Construction of a 250 MW Coal-Fired Generating Unit (with a Circulating Fluid Bed Boiler) at the Hugh L. Spurlock Power Station and Related Transmission Facilities, Located in Mason County, Kentucky, to be Constructed Only in the Event that the Kentucky Pioneer Energy Power Purchase Agreement is Terminated*, Order, Case No. 2001-00053, p. 4 (Sept. 26, 2001) (“Due to the potential cost savings over time from burning biomass, the Commission finds that East Kentucky should conduct a detailed analysis of fueling the Gilbert unit with wood waste and other biomass products.”).

<sup>6</sup> *In the Matter of Big Rivers Corporation*, Order, Case No. 1994-00453, 1997 WL 152646, \*5 (Feb. 21, 1997) quoting Case No. 1993-00113.

Moreover, in a case involving the Union Light, Heat and Power Company, Kentucky's highest court stated that the Commission – like a Court – speaks through its orders.<sup>7</sup> Thus, an order from the Commission may – with proper evidentiary support – reach a result that may at first appear contrary to a written regulation, so long as the distinction evidenced in the written order is adequately explained. This principle is reflected in other prior Commission precedent stating that Commission orders have the same legal force and effect as a statute.<sup>8</sup> Finally, the Commission should consider the Kentucky Supreme Court's most recent conclusion in the *AMRP Case* that the Commission has plenary authority with respect to establishing fair, just and reasonable rates for utilities in Kentucky.<sup>9</sup>

On the basis of the foregoing, EKPC respectfully requests the Commission to permit the recovery of economic fuel costs related to biomass resources and tire derived products as part of its fuel adjustment clause.

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<sup>7</sup> See *Union Light, Heat and Power Co. v. Public Service Comm'n*, 271 S.W.2d 361, 365 (Ky. 1954) ("It may thus be said that the commission, like a court, acts and speaks only through its written orders.").

<sup>8</sup> See *In the Matter of Big Rivers Electric Corporation*, Order, Case No. 1994-00453, 1997 WL 152646, \*2 (Feb. 21, 1997) ("As rate-making orders have statutory effect, they are subject to the rules ordinarily applied in statutory construction.").

<sup>9</sup> See *Kentucky Public Service Comm'n v. Commonwealth of Kentucky, ex rel., Conway*, 324 S.W.3d 373 (Ky. 2010). The AMRP case also confirmed Kentucky's adoption of the *Hope* doctrine that it is the result reached, and not necessarily the method, that matters in ratemaking.