

AGREEMENT FOR ELECTRIC SERVICE

AGREEMENT made June 22, 1990, between Henderson-Union R.E.C.C.

a Kentucky corporation (hereinafter called the "Seller"), and The Pittsburgh & Midway Coal Mining Company. (hereinafter called the "Consumer"),

a Colorado corporation (corporation, partnership or individual)

The Seller shall sell and deliver to the Consumer, and the Consumer shall purchase all of the electric power and energy which the Consumer may need at the location described in Exhibit A attached hereto and by this its Webster County, Kentucky Coal Mine.

up to 10,000 kilowatts, upon the following terms:

1. Service Characteristics.

a. Service hereunder shall be alternating current, three phase, three wire, sixty cycles, 69,000 volts.

b. The Consumer shall not use the electric power and energy furnished hereunder as an auxiliary or supplement to any other source of power and shall not sell electric power and energy purchased hereunder.

c. See Addendum 1.

2. Payment.

a. The Consumer shall pay the Seller for service hereunder at the rates and upon the terms and conditions set forth in Schedule LP-4 attached to and made a part of this Agreement.. Notwithstanding any provision of the Schedule and irrespective of Consumer's requirements for or use of electric power and energy, the

demand for billing purposes hereunder shall be not less than 501 kilowatts for any billing period. The billing period from February 1, 1991 to June 1, 1991, and shall not be less than 2001 kilowatts for all billing periods after June 1, 1991.

b. The initial billing period shall start when Consumer begins using electric power and energy,

or 15 days after the Seller notifies the Consumer in writing that service is available hereunder, whichever shall occur first, but in no case before February 1, 1991.

c. Bills for service hereunder shall be paid at the office of the Seller in Henderson

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Such payments shall be due on the 15th day of each month for service furnished during the preceding month's billing period. NOV 1 1990

If the Consumer shall fail to make any such payment within fifteen days after such payment is due, the Seller may discontinue service to the Consumer upon giving fifteen (15) days' written notice to the Consumer of its intention so to do, provided, however, that such discontinuance of service shall not relieve the Consumer of any of its obligations under this agreement. Amounts unpaid within the due date shall be subject to a late payment penalty in accordance with the terms of Schedule LP-4.

d. The Consumer agrees that if, at any time, the Seller's rate for service hereunder is modified, the rate for service hereunder shall be correspondingl

3. Membership.

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

4. Continuity of Service.

The Seller shall use reasonable diligence to provide a constant and uninterrupted supply of electric power and energy hereunder. If the supply of electric power and energy shall for or be interrupted, or become defective through lack of good Governmental authority, action of the elements, public enemy, accident, strikes, labor troubles, required maintenance work, inability to secure right of way, or any other cause beyond the reasonable control of Seller, the Seller shall not be liable therefor or for damages caused thereby. See Addendum 3.

5. Right of Access.

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

6. Term.

This Agreement shall become effective on the date first above written and shall remain in effect until 10 years following the start of the initial billing period and thereafter until terminated by either party giving to the other 12 months' notice in writing.

7. Succession and Approval.

a. This Agreement shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the respective parties hereto. See Addendum 4.

b. This contract shall not be effective unless approved in writing by the Administrator of the Rural Electrification Administration, and until approved or otherwise accepted by the Kentucky Public Service Commission.

8. Deposits. See Addendum 5.

The Consumer shall deposit with the Seller the sum of \$ on account of the cost of facilities required to be installed to the Consumer on or before commencement of construction of work facilities. Such deposit shall be returnable to the Consumer in the form of a check on each bill for service in the amount of per month. All such bills shall continue until the total amount of the deposit has been returned to the Consumer or any portion of the deposit remaining upon termination of this Agreement.

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

HENDERSON-UNION RURAL ELECTRIC COOPERATIVE CORPORATION

SELLER

ATTEST:

William B. ... PUBLIC SERVICE COMMISSION OF KENTUCKY SECRETARY EFFECTIVE

By Morton Henshaw PRESIDENT

The Pittsburg & Midway Coal Mining Co.

CONSUMER

NOV 1 1990

ATTEST: PURSUANT TO 807 KAR 5:011, SECTION 9 (1), BY: Gary ... PUBLIC SERVICE COMMISSION MANAGER

By R.M. Holsten President - P&M

SECRETARY

TITLE OF OFFICER

ADDENDA TO REA FORM 320

ADDENDUM 1

1.10 Facilities to be Provided by Consumer.

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

1.12 Except as provided in Section 1.20 of this Addendum, Consumer shall furnish and install, or cause to be furnished or installed, such facilities and equipment as may be necessary to enable it to receive and use electric power and energy purchased hereunder at and from the point of delivery, including such protective devices as may be reasonably necessary in the opinion of the Seller to protect the system of the Seller from disturbances caused by Consumer. Plans for equipment to be installed for such protection shall be submitted to Seller for prior approval.

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

1.21 One 69,000 volt electric transmission line extending from Big Rivers Electric Corporation's existing transmission line system

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to Consumer's dead-end structure near Consumer's substation yard.

1.22 Metering, communications, relaying, and control circuits as mutually agreed upon and as necessary for proper measurement, control and coordination between Seller's and Consumer's facilities.

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

1.40 Electric Disturbances and Phase Balancing Consumer shall not use the energy delivered under this agreement in such manner as to cause electric power and energy disturbances which may be reasonably expected to cause damage to or interference with Seller's system, a system connected with Seller's system, or facilities or other property in proximity to Seller's system; or which prevent Seller from serving other consumers satisfactorily.

ADDENDUM 2

Termination. If termination of this agreement is requested by the Consumer prior to the end of its primary term, ~~EFFECTIVE~~ terminated by the Seller for nonpayment by Consumer, a termination charge shall be paid to the Seller by the Consumer equal to the actual investment made by Seller's wholesale power supplier to erect the transmission line described in paragraph 1.21 of this Addenda, reduced by 1/120th of that amount for each month Consumer purchases power and

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energy from Seller. The investment is estimated to be \$325,000.00. Consumer shall also be obligated to reimburse Seller the amount of all demand credits received from Seller under the economic development clause of the rate schedule.

ADDENDUM 3

Force Majeure. In the event performance of this agreement is limited or prevented in whole or in part by Acts of God, strikes, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of the Government (whether federal, state, or local, civil or military), civil disturbances, explosions, breakage of or accident to machinery, equipment or transmission lines inability of either party hereto to obtain necessary materials, supplies, or permits due to existing or future rules, regulations, orders, laws or proclamations of governmental authorities (whether federal, state, or local, civil or military) or any other cause beyond the reasonable control of the parties hereto whether or not specifically provided herein, upon such party's giving notice and reasonably full particulars of such force majeure or uncontrollable force, in writing or by telegraph to the other party within a reasonable time after the occurrence of the cause relied on, the party whose performance is so limited or prevented shall be excused, discharged and released from the performance to the extent such performance is limited or prevented, but only for the period when the performance is limited or prevented and thereafter all of the terms of this agreement shall remain in effect except that the term of the agreement shall be extended for a period equal to the duration of the aforesaid force majeure. Consumer shall be excused from paying the minimum bill during any period of force majeure, but nothing contained herein shall excuse Consumer from the obligations of paying at the time provided herein, for any

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power consumed by it. In no event shall this agreement subject either party to liability for consequential damages or damages for loss of anticipated profits.

ADDENDUM 4

Successors in Interest. Consumer may with written approval of Seller, assign or transfer this agreement to any subsidiary or affiliate of Consumer, and in such event if such assignee or transferee shall assume all obligations or responsibilities of Consumer under this agreement, then the consumer shall become only secondarily liable for such obligations and responsibilities.

ADDENDUM 5

5.10 Capital Credits Seller is a non-profit Kentucky corporation and Consumer will benefit from any savings or reductions in cost of service in the same manner as any comparable consumer as authorized by the Kentucky Revised Statutes, and by Seller's Articles of Incorporation and Bylaws as may be in effect; provided, however, the Seller's board of directors may defer retirement of so much of the capital credited to patrons for any year which reflects capital credited to the Seller by Big Rivers Electric Corporation (Big Rivers), Seller's wholesale power supplier, until Big Rivers shall have retired such capital credited existing prior to the effective date of this agreement, but shall participate in Consumer's capital credits accruing from and after such date in accordance with the Kentucky Revised Statutes and Consumer's Articles of Incorporation and Bylaws. Capital credits shall be promptly distributed to Consumer in accordance with the Kentucky revised Statutes Consumer's Articles of Incorporation and Bylaws and subject to such requirements as may be imposed by the Rural Electrification Administration.

5.20 Remedies of the Parties. Waiver at any time by either party of rights with respect to a default or any other matter arising in connection with this agreement shall not be deemed to be a waiver with respect to any subsequent

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default or matter. Except as specifically provided herein, this agreement shall not be construed to abridge, limit, or deprive either party of any remedy for breach of the provisions herein which would otherwise be available at law or equity.

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

5.40 Notices. Any written notice, demand or request required or authorized under this agreement shall be deemed properly given to or served on Seller if mailed to: Henderson-Union Rural Electric Cooperative Corporation, P.O. Box 18, Henderson, Kentucky 42420. Any such notice, demand or request shall be deemed properly given to or served on Consumer if mailed to: Green Construction Company of Indiana, P.O. Box 841, Owensboro, Kentucky 42301, Attention: Tom Green. Each party shall have the right to change the name of the person to whom or the location to which the notices are to be given or served by notifying the other party, in writing, of such change.

5.50 Jurisdiction and Venue. The terms, covenants and conditions herein contained constitute the entire agreement between the parties and shall supersede all previous communications, representatives, or agreement, either oral or written, between the parties hereto with respect to the subject matter hereof, provided, however, that service to the Consumer is subject to the provisions of the Articles of Incorporation and Bylaws of Seller and is subject to the lawful orders of the Kentucky Energy Regulatory Commission and the Public Service Commission of Kentucky. Obligations of the parties shall be governed by the laws of the State of Kentucky. Venue of any action, legal or equitable, having as its basis the enforcement or interpretation of this contract, shall be in Kentucky.

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

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BY: George L. Miller  
PUBLIC SERVICE COMMISSION MANAGER



# Amro Bank



New York Branch  
Amsterdam-Rotterdam Bank NV  
500 Park Avenue  
New York, New York 10022

THIS IRREVOCABLE STANDBY LETTER OF CREDIT REPLACES OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. 72253 DATED AUGUST 31, 1990.

OCTOBER 26, 1990

IRREVOCABLE STANDBY LETTER OF CREDIT NO. 72253

BENEFICIARY: HENDERSON-UNION R.E.C.C.  
435 SOUTH WYE  
HENDERSON, KENTUCKY 42420

DEAR SIR(S):

BY ORDER AND FOR THE ACCOUNT OF THE PITTSBURG & MIDWAY COAL MINING CO., WE HEREBY ISSUE OUR IRREVOCABLE LETTER OF CREDIT NO. 72253 IN FAVOR OF HENDERSON-UNION R.E.C.C. FOR FOUR HUNDRED AND FIVE THOUSAND U.S. DOLLARS (US \$405,000.00) OR SUCH LESSER AMOUNT AS MAY BE OWED UNDER THE TERMINATION PROVISIONS IN THE AGREEMENT FOR ELECTRIC SERVICE DATED JUNE 22, 1990, BETWEEN THE PITTSBURG & MIDWAY COAL MINING CO. AND HENDERSON-UNION R.E.C.C. THIS LETTER OF CREDIT EXPIRES AT OUR OFFICE WITH THE CLOSE OF BUSINESS ON JUNE 30, 2001.

PAYMENT UNDER THIS LETTER OF CREDIT NO. 72253 IS AVAILABLE TO YOU UPON PRESENTATION OF:

1. THE ORIGINAL OF THIS LETTER OF CREDIT NO. 72253 AND ANY SUBSEQUENT AMENDMENTS.
2. YOUR SIGHT DRAFT DRAWN ON US.
3. WRITTEN STATEMENT PURPORTEDLY SIGNED BY AN OFFICIAL OF HENDERSON-UNION R.E.C.C. CERTIFYING THAT:

"THE PITTSBURG & MIDWAY COAL MINING CO. (P&M COAL) HAS FAILED TO COMPLY WITH THE TERMINATION PROVISIONS IN THE AGREEMENT FOR ELECTRIC SERVICE, DATED JUNE 22, 1990, BETWEEN P&M COAL AND HENDERSON-UNION R.E.C.C."

PARTIAL DRAWINGS ARE ALLOWED, BUT DRAWINGS ARE NOT TO EXCEED THE AGREGATE AMOUNT OF THIS LETTER OF CREDIT.

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YOURS VERY TRULY

AMRO BANK  
NEW YORK BRANCH

*Leandra C. Navas*  
GB/34

# Amro Bank



New York Branch  
Amsterdam-Rotterdam Bank NV  
500 Park Avenue  
New York, New York 10022

THIS FORMS AN INTEGRAL PART OF IRREVOCABLE STANDBY LETTER OF CREDIT NO. 72253.

WE HEREBY ENGAGE WITH THE DRAWERS, ENDORSERS AND BONA FIDE HOLDERS OF THE DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT THAT THESE DRAFTS WILL BE DULY HONORED BY US.

UNLESS EXPRESSLY STATED, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1983 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 400.

CC: THE PITTSBURG & MIDWAY COAL MINING CO.  
225 BUSH STREET-ROOM 1015  
SAN FRANCISCO, CALIFORNIA 94104

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YOURS VERY TRULY

AMRO BANK  
NEW YORK BRANCH

*Richard A. Thomas* *Richard A. Thomas*

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