

SECOND AMENDED AND RESTATED AGREEMENT FOR ELECTRIC SERVICE

THIS AMENDED AND RESTATED AGREEMENT FOR ELECTRIC SERVICE ("**Amended Agreement**" or the "**Agreement**") is made and entered into as of the 20th day of August, 2024, between **KENERGY CORP.**, a Kentucky electric cooperative corporation, P.O. Box 18, Henderson, KY 42419 (hereinafter called the "Seller"), and **KENTUCKY LAND RESOURCES, INC.**, a Delaware corporation, with its principal office located at 46226 National Road, St. Clairsville, OH 43950, for service desired at the Midway Mine and Prep Plant site with a service address of 1720 M2 Road, Centertown, KY 42328 (hereinafter called the "Consumer").

WHEREAS, KENERGY CORP. and Armstrong Coal Company, Inc. entered into that certain Agreement for Electric Service, dated October 8, 2007, as may have been amended, for electric power and energy at the Midway Mine and Prep Plant site with a service address of 1720 M2 Road, Centertown, KY 42328 (the "Original Agreement");

WHEREAS, the Consumer is the ultimate assignee of Armstrong Coal Company, Inc. in the Original Agreement;

WHEREAS, Seller and Consumer entered into that certain Amended Agreement for Electric Service, dated March 4, 2021, (the "First Amended Agreement") that amended and restated the Original Agreement; and


WHEREAS, the Consumer and Seller desire to amend and restate the First Amended Agreement in its entirety.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Consumer and Seller hereto agree as follows:

1. SERVICE CHARACTERISTICS

A. The Seller shall supply, sell and deliver to the Consumer, and the Consumer shall accept and pay for all of the electric power and energy the Consumer may need at its Midway Mine and Prep Plant site at the service address listed above, up to the Maximum Contract Demand. The Maximum Contract Demand along with the other characteristics of the electric service provided hereunder are described more fully in Exhibit "A," ("Service Characteristics") to this Amended Agreement.

B. The Consumer acknowledges that Seller's **wholesale power supplier, Big Rivers Electric Corporation ("Big Rivers")** is transmitting electric power and energy to Seller for sale hereunder across the **tr Big Rivers Electric Corporation (the "Wholesale Transmissio**

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C. The Consumer is an existing member of Seller and Consumer is changing its operations at various sites and will significantly reduce its demand at those sites. Therefore, the parties are entering into this Amended Agreement, including all exhibits hereto, to modify terms of the Original Agreement. This Amended Agreement embodies the entire agreement and understanding of the parties hereto and supersedes the Original Agreement and all previous Amendments thereto.

2. **SERVICE RESTRICTION**

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.

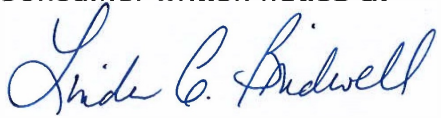
3. **PAYMENT**

A. The Consumer shall pay the Seller for service hereunder upon the terms, conditions and rates set forth in Seller's Schedule 35, as it may be amended from time to time, and any other applicable tariffs of Seller, or any successor tariff(s), all of which are incorporated herein by reference. A copy of Seller's current Schedule 35 is attached hereto as Exhibit "B." Notwithstanding any provision of Schedule 35 and irrespective of Consumer's requirements for or use of electric power and energy, the Minimum Contract Demand (as used in Schedule 35) for billing purposes per billing period (per month) hereunder shall always be 60% of the then current Maximum Contract Demand as defined in Exhibit "A." Consumer agrees that its metered demand shall not exceed its Maximum Contract Demand in any month. Upon written demand by either party, which demand may be given by a party no more than once every six (6) months, the Maximum Contract Demand shall be adjusted up or down without contract amendment to the value that is twenty percent (20%) above the average of the previous six (6) months actual usage by Consumer; provided, however, that the Maximum Contract Demand shall not exceed 1,200 kW.

B. Bills for service hereunder shall be paid at the office of the Seller at Kenergy Corp, 6402 Old Corydon Rd., Henderson, KY 42420.

C. Such payments shall be due on the 15th day of each month for service furnished during the preceding monthly billing period.

D. If payment in full is not paid on or before the 15th day of the month (the "Due Date"), or if Consumer fails to maintain an adequate security deposit as required hereunder, the Seller may discontinue service to the Consumer without further action on the part of Seller by giving the Consumer written notice at

<p>15th day of the month (the "Due Date"), or if Consumer fails to maintain an adequate security deposit as required hereunder, the Seller may discontinue service to the Consumer without further action on the part of Seller by giving the Consumer written notice at</p>
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least five (5) calendar days in advance of its intention to do so; provided, however, that such discontinuance of service shall not relieve the Consumer of any of its obligations under this Amended Agreement or limit Seller's other remedies under this Amended Agreement.

E. The Consumer agrees that if, at any time, the rate under which the Seller purchases electric service at wholesale is modified, the Seller may make an equivalent modification in the rate for service hereunder.

F. Consumer's payment obligations under Paragraph 3 shall survive termination of this Amended Agreement.

4. **MEMBERSHIP**

The Consumer is an existing member of the Seller, and continues to be bound by such generally applicable rules and regulations as may from time to time be adopted by the Seller.

5. **SECURITY DEPOSITS**

A. **Monthly Billing Obligations**

(i) As security for payment of its monthly billing obligations, Consumer shall provide to Seller on or before the effective date of this Agreement and maintain a cash deposit or provide an irrevocable bank letter of credit satisfactory to Seller representing two (2) months' estimated billing ("Estimated Billing"). The Estimated Billing at the execution of this Amended Agreement, being \$46,364.55 (the "Initial Obligation"), is based on Consumer's estimates of its modified usage and Seller's current rates.

(ii) Every six (6) months, the Estimated Billing will automatically be adjusted to the amount equal to twice the monthly average of the past six (6) months' invoices for Consumer's actual usage (the "Adjusted Obligation"). Should the Initial Obligation exceed the Adjusted Obligation, Consumer may require Seller to refund the difference between the Initial Obligation and Adjusted Obligation. Consumer's request for said refund shall be made in writing to Seller, and Seller shall comply with said request within forty-five (45) days from the date of the notice. Should the Adjusted Obligation exceed the Initial Obligation, Seller's rates increase, or the balance of the deposit or bank letter of credit fall below the Estimated Billing, then Seller may require Consumer to increase the deposit or the bank letter of credit for the Estimated Billing to compensate for those changes. Seller's request for said increase shall be made in writing to Consumer, and Consumer shall comply with said request within forty-five (45) days from the date of the notice. Failure of Consumer to adjust the deposit or bank letter of credit as required by Seller pursuant to this paragraph shall constitute a material breach of this Amended Agreement and may result in termination of said Agreement.

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Notwithstanding the preceding paragraph, should the Consumer's prior monthly usage incur a non-seasonal increase or decrease in energy usage of 20% or more, then the affected party may make a demand upon the other party for a specific adjustment to the deposit to ensure that the cash deposit is adequate to cover the increased usage or is not excessive due to the decreased usage. If the responding party does not accept the demand within ten (10) days of receipt of the demand to adjust the deposit, the parties agree that the affected party may petition the Kentucky Public Service Commission for an emergency declaratory order adjusting the deposit.

(iii) If Consumer fails to pay its invoice for service by the Due Date, Seller may, in addition to and without limiting any other remedies available to it, immediately call on the security deposit or any other security deposit on any other agreement between Consumer and Seller for payment provided by Consumer to satisfy that unpaid invoice.

(iv) The security deposit under this Amended Agreement secures the obligations now or hereafter outstanding under all other agreements between Consumer and Seller, and the security deposit pledged under any other agreement between Consumer and Seller secures the obligations under this Amended Agreement.

B. Interest on Security Deposits

Any cash deposit will earn interest in accordance with law, and interest earned will be paid annually to Consumer. Letters of credit for the foregoing securities may be combined, and must be approved in advance by Seller as to form and issuer.

C. Survival

Consumer's obligations under this Paragraph 5 shall survive termination or expiration of this Amended Agreement.

6. CONTINUITY OF SERVICE

A. The Seller shall use reasonable diligence to provide a constant and uninterrupted supply of electric power and energy hereunder. However, Seller does not guarantee uninterrupted service, and neither Seller nor Big Rivers shall be responsible for damages to Consumer occasioned by any failure, shortage, or interruption of service for any reason, including but not limited to those resulting from maintenance work, inability to secure right-of-way, or from a Force Majeure Event, as defined in Paragraph 6.B, below.

B. In the event performance of this Amended Agreement is limited or prevented in whole or in part by acts of God, strikes, labor trouble, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, storms, floods, washouts, arrests and re

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(whether federal, state, or local, civil or military), civil disturbances, explosions, breakage of or accident to machinery, equipment or transmission lines, or inability of either party hereto to obtain necessary materials, supplies, or permits due to existing or future rules, regulations, orders, laws or proclamations of governmental authorities (whether federal, state, or local, civil or military), or any other cause beyond the reasonable control of the parties hereto (each a "Force Majeure Event"), whether or not specifically provided herein, upon such party's giving notice and reasonably full particulars of such Force Majeure Event, in writing to the other party within a reasonable time after the occurrence of the Force Majeure Event, 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. Thereafter, all of the terms of this Amended 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 Event. Each Party will, in the event it experiences a Force Majeure Event, use all commercially reasonable efforts to eliminate the effects of such Force Majeure Event on its performance as soon as reasonably possible. A minimum bill due during a billing period when a Force Majeure Event occurs shall be prorated based upon the duration of the effect of the Force Majeure Event, but nothing contained herein shall excuse Consumer from the obligations of paying in accordance with the terms of this Amended Agreement, for any power consumed by it.

7. **RIGHT OF ACCESS**

A. 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 at Seller's sole risk and expense. Seller shall comply with all of Consumer's then effective safety policies and procedures.


B. Consumer shall furnish to Seller such reports and information concerning the matters addressed in or matters arising out of this Amended Agreement or any exhibit hereto as the Seller may reasonably request from time to time.

8. **EVENTS OF DEFAULT AND REMEDIES**

A. **Events of Default.** Each of the following constitutes an Event of Default under this Amended Agreement:

- (i) Failure by Consumer to make any payment in accordance with this Amended Agreement;
- (ii) Failure of a Party to perform any material duty imposed on it by this Amended Agreement, including but not limited to failure to maintain an adequate security deposit as required hereunder;

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- (iii) Any attempt by a Party to transfer an interest in this Amended Agreement other than as permitted pursuant to Paragraph 12;
- (iv) Any filing of a petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency laws, or voluntarily taking advantage of any such laws by answer or otherwise, or the commencement of involuntary proceedings under any such laws by a Party and such petition has not been withdrawn or dismissed within sixty (60) days after filing;
- (v) Assignment by a Party for the benefit of its creditors; or
- (vi) Allowance by a Party of the appointment of a receiver or trustee of all or a material part of its property and such receiver or trustee has not been discharged within sixty (60) days after appointment.

B. **Remedies.** Following the occurrence and during the continuance of an Event of Default by either Party, the non-defaulting Party may, in its sole discretion, elect to terminate this Amended Agreement upon written notice to the other Party, or to seek enforcement of its terms at law or in equity. Remedies provided in this Amended Agreement are cumulative. Nothing contained in this Amended Agreement may be construed to abridge, limit, or deprive either Party of any means of enforcing any remedy either at law or in equity for the breach or default of any of the provisions herein, except as provided in Paragraph 8.C below.

C. **LIMITATION OF DAMAGES.** UNDER NO CIRCUMSTANCES WILL SELLER (OR ITS WHOLESALE POWER SUPPLIER), OR THEIR RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES OR AGENTS BE LIABLE HEREUNDER TO THE CONSUMER, WHETHER IN TORT, CONTRACT, OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, PUNITIVE EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS. SELLER'S LIABILITY (AND THE LIABILITY OF ITS WHOLESALE POWER SUPPLIER) HEREUNDER SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES. THE EXCLUSION OF ALL OTHER DAMAGES SPECIFIED IN THIS SECTION IS WITHOUT REGARD TO THE CAUSE OR CAUSES RELATING THERETO. THIS PROVISION WILL SURVIVE THE TERMINATION OF THIS AMENDED AGREEMENT.

D. **Survival.** Obligations of a Party accrued under this Amended Agreement on the date this Amended Agreement is terminated or otherwise expires shall survive that termination or expiration.

9. **INDEMNIFICATION**

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Consumer agrees to indemnify and hold Seller harmless from and against any and all claims, demands, damages, judgments, losses or expenses asserted against Seller arising out of, related to or concerning damage to the Wholesale Transmission System resulting from Consumer's operations, activities or Consumer's usage of electric power and energy hereunder, unless said claim, demand, damage, judgments, losses or expenses arise out of the sole negligence or intentional misconduct of Seller. Additionally, Consumer assumes all responsibility for the electric service upon Consumer's premises at and from the Delivery Point of electricity and for the wires and equipment used in connection therewith. Each party hereby agrees to indemnify and hold harmless the other party from any and all claims for injury or damage to persons or property occurring on Consumer's premises or at and from the Delivery Point of electricity, occasioned by such electricity or said wires and equipment, except where said injury or damage is occasioned solely by the negligence or intentional misconduct of the other party.

10. **NOTICE**

Except as herein otherwise expressly provided, any notice, demand or request provided for in this Amended Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or by any qualified and recognized delivery service, or sent postage prepaid by United States certified mail, return receipt requested, to the persons specified below unless otherwise provided for in this Amended Agreement.

TO CONSUMER: Kentucky Land Resources, Inc.
Attn: Director of Purchasing
46226 National Road
St. Clairsville, OH 43950
Telephone: (740) 338-3100
Facsimile: (740) 338-3408

With a copy to:

American Consolidated Natural Resources, Inc.
Attn: General Counsel
46226 National Road
St. Clairsville, OH 43950
Telephone: (740) 338-3100
Facsimile: (740) 338-3409

TO SELLER: President and CEO
Kenergy Corp.
P.O. Box 18
Henderson, KY 42419
Telephone: (270) 831-46
Facsimile: (270) 826-3999

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

11. REPRESENTATIONS AND WARRANTIES

A. **Representations of Seller.** Seller hereby represents and warrants to Consumer as follows:

(i) Seller is an electric cooperative corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Amended Agreement, to perform its obligations hereunder, and to carry on its business as such business is now being conducted and as is contemplated hereunder to be conducted during the term hereof.

(ii) The execution, delivery, and performance of this Amended Agreement by Seller have been duly and effectively authorized by all requisite corporate action.

B. **Representations and Warranties of Consumer.** Consumer hereby represents and warrants to Seller as follows:

(i) Consumer is a corporation duly organized and validly existing and in good standing under the laws of the State of Delaware, is authorized to do business in the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Amended Agreement, to perform its obligations hereunder, and to carry on its business as such business is now being conducted and as is contemplated hereunder to be conducted during the term hereof.

(ii) The execution, delivery, and performance of this Amended Agreement by Consumer have been duly and effectively authorized by all requisite corporate action.

12. SUCCESSION AND APPROVAL

This Amended Agreement shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the Parties hereto and may be assigned by Consumer only with the prior written consent of Seller, which consent shall not be unreasonably withheld. Pursuant to the foregoing, Seller may withhold approval of a proposed as

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provided with all information it may reasonably require regarding the proposed assignee, and it has determined that the proposed assignee has the ability to fulfill Consumer's obligations hereunder to the reasonable satisfaction of Seller following the proposed assignment. Any assignment of this Amended Agreement by Consumer shall not relieve Consumer of its obligations to Seller hereunder unless Consumer has been expressly relieved of those obligations by Seller, in writing. This Amended Agreement shall not be effective unless and until all necessary approvals are received from the Kentucky Public Service Commission ("Commission") and the Rural Utilities Service ("RUS"), whichever occurs later.

13. TERM AND SERVICE COMMENCEMENT DATE

This Amended Agreement shall become effective upon the approval or acceptance referred to above in Paragraph 12, and shall remain in effect until and unless terminated by either party by giving the other party three (3) months' notice in writing.

14. MISCELLANEOUS

A. **Entire Agreement.** The terms covenants, and conditions contained in this Amended Agreement, including the attached exhibits, constitute the entire agreement between the parties and shall supersede all previous communications, representations, or agreements, either oral or written between the Parties hereto with respect to the subject matter hereof; provided, however, that service to Consumer is subject to the Articles of Consolidation and Bylaws of Seller in addition to the laws, rules, regulations and lawful orders of the Commission.

B. **Jurisdiction and Venue.** All respective rights and obligations of the Parties shall be governed by the laws of the Commonwealth of Kentucky and the rules, regulations and orders of the Commission, without regard to its conflicts of law rules. The Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over each and every judicial action brought under or in relationship to this Amended Agreement; provided that the subject matter of such dispute is not a matter reserved by law to the Commission (in which event exclusive jurisdiction and venue will lie with the Commission), or to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties hereby agree to submit to the jurisdiction of Kentucky courts for such purpose. Venue of any state court action, legal or equitable, having as its basis the enforcement or interpretation of this contract, shall be Henderson County, Kentucky.

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

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D. **Amendments.** This Amended Agreement may be amended, revised, or modified by, and only by, a written instrument duly executed by both Parties.


E. **Counterparts.** This Amended Agreement may be executed in any number of counterparts, which together will constitute but one and the same instrument, and each counterpart will have the same force and effect as if they were one original.

F. **Headings.** The headings contained in this Amended Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Amended Agreement.

G. **Severability.** Should any provision or provisions of this Amended 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 Amended Agreement, and all other provisions hereof shall remain in full force and effect.

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

KENERGY CORP.
Seller

By: 

Printed Name: Tim Lindahl

Title: President and CEO

KENTUCKY LAND RESOURCES, INC.
Consumer

By: 

Printed Name: James R. Turner, Jr.

Title: President

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Executive Director



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EXHIBIT A
TO AGREEMENT FOR ELECTRIC SERVICE

SERVICE CHARACTERISTICS

Consumer: Kentucky Land Resources, Inc. – Midway Mine and Plant Site

Service Address: 1720 M2 Road, Centertown, Kentucky 42328


1.10 Maximum & Minimum Contract Demand

- (a) For purposes of this Agreement, the Maximum Contract Demand shall be 1,000 kilowatts and Minimum Contract Demand shall be sixty percent (60%) of the then current Maximum Contract Demand.
- (b) Seller agrees that upon written request from the Consumer, it will seek amendment and necessary approvals to increase the Maximum Contract Demand, provided that Consumer is not in default under this Agreement at the time of the request.
- (c) Upon written demand by either party, which demand may be given by a party no more than once every six (6) months, the Maximum Contract Demand shall be adjusted up or down without contract amendment to the value that is twenty percent (20%) above the average of the previous six (6) months actual usage by Consumer; provided, however, that the Maximum Contract Demand shall not exceed 1,200 kilowatts.

1.20 Delivery Point

- (a) "Delivery Point" is defined as the point at which Consumer's facilities connect to Big Rivers' facilities, and the point at which title to the electric energy purchased by Consumer under this Agreement passes to Consumer.
- (b) The Delivery Point on the Effective Date of this Agreement shall be the existing Big Rivers' Delivery Point.
- (c) The Service hereunder shall be delivered to the Delivery Point in the form of alternating current, sixty cycles, 69,000 volts, three phase, 3 wire.

1.30 Facilities to be Provided by Consumer

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- (a) Consumer shall provide, cause to be provided, or continue to provide (without cost to Seller), reasonable easements upon Consumer's property that in the opinion of the Seller are necessary for the construction or continued maintenance of facilities which the Seller or its wholesale power supplier must furnish or has furnished to provide electric service under this Agreement.
- (b) Except as provided in Paragraph 1.40 of this Exhibit, Consumer shall furnish and install, or cause to be furnished or installed, such facilities and equipment as may be necessary to enable it to receive and use electric power and energy purchased hereunder at and from the Delivery Point, including such protective devices as may be reasonably necessary in the opinion of the Seller to protect the system of the Seller (including the Wholesale Transmission System) from disturbances caused by Consumer. Plans for equipment to be installed for such protection shall be submitted to Seller for prior approval.

1.40 Facilities to be Provided by Seller

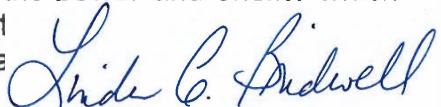
Seller shall furnish and install, or cause to be furnished and installed, all necessary facilities required for the delivery of electric power and energy to the Delivery Point ("Big Rivers Facilities"), including metering, communications, relaying, control circuits, and associated equipment necessary to properly measure, control, coordinate and deliver electrical power and energy to Consumer's delivery point.

1.50 Construction Standards

- (a) Consumer shall construct and maintain any facilities it builds or has built under an obligation created by the Agreement for Electric Service ("Consumer's Facilities") in accordance with applicable provisions of the National Electrical Safety Code of the American National Standards Institute (ANSI C2), and other applicable laws, codes, and regulations.
- (b) Seller shall have no duty to inspect Consumer's Facilities for conformance with the standards described above. Each party shall own, maintain and operate the facilities it purchases and installs.

1.60 Electric Disturbances and Phase Balancing

- (a) Consumer shall not use the power and energy delivered under this Agreement in such a manner as to cause a System Disturbance (as defined below). A system disturbance is a use of electric power and energy which directly or indirectly results in a risk of harm to persons or property, damage to or interference with the Wholesale Transmission System, or damage to or interference with the Wholesale Transmission System.

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

- (b) Seller, at its sole discretion, may require Consumer, at Consumer's expense, to make changes in its system as Seller deems to be reasonably necessary to eliminate System Disturbances. If Seller determines that Consumer's use of power and energy creates an imbalance between phases that causes a System Disturbance, and Consumer fails to make changes in its system requested by Seller to correct such condition in the time frame requested by Seller, Seller may, in its determination of billing demand, assume that the load on each phase is equal to the greatest load on any phase. This shall be in addition to any other remedies it may have against Consumer due to said failure.
- (c) Consumer shall maintain a power factor at the Delivery Point as nearly as practicable to unity. Power factor during normal operation may range from unity to ninety percent (90%). If Consumer's power factor is less than 90% at time of maximum load, Seller reserves the right to require Consumer to choose either (a) installation at Consumer's expense of equipment which will maintain a power factor of 90% or higher; or (b) adjustment of the maximum monthly metered demand for billing purposes in accordance with the following formula:

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

- (d) Consumer acknowledges and agrees that neither Seller nor Big Rivers shall have any responsibility for damage to any property, or to any equipment or devices connected to Consumer's electrical system on Consumer's side of the Delivery Point that results in whole or in part from the acts or omissions of Consumer, its employees, agents, contractors or invitees, or from malfunction of any equipment or devices connected to Consumer's electrical system on Consumer's side of the Delivery Point.

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