

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

)	
)	
In re:	)	Chapter 11
)	
LONGVIEW POWER, LLC, <u>et al.</u> , ¹	)	Case No. 13-12211 (BLS)
)	
Debtors.	)	Jointly Administered
)	
	)	Hearing Date: January 22, 2014, at 10:00 a.m. (ET)
	)	Objection Deadline: January 6, 2014, at 4:00 p.m. (ET)

**DEBTORS’ MOTION FOR ENTRY OF AN ORDER AUTHORIZING (A) THE
REJECTION OF A CERTAIN ASH DISPOSAL CONTRACT EFFECTIVE NUNC PRO
TUNC TO THE DATE HEREOF AND (B) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) file this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A**: (a) authorizing the rejection of that certain Material Handling Agreement, dated as of April 30, 2009, between Allegheny Energy Supply Company, LLC (“Allegheny”) and Coresco, LLC, one of the above-captioned Debtors (the “Ash Disposal Contract”), effective nunc pro tunc to the date hereof; and (b) granting related relief. In support of this Motion, the Debtors respectfully state as follows:

Jurisdiction

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended*

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: (a) Longview Power, LLC (1860); and Longview Intermediate Holdings C, LLC (1008) (collectively, the “Longview Debtors”); and (b) Mepco Holdings, LLC (6654); Mepco Intermediate Holdings A, LLC (0502); Mepco Intermediate Holdings, LLC (4248); Mepco, LLC (3172); Coresco, LLC (6397); Dana Mining Company of Pennsylvania, LLC (8721); Dana Mining Company, LLC (4499); Mepco Conveyor, LLC (0477); Shannopin Materials LLC (1616); Border Energy, LLC (2798); and Alternate Energy, LLC (2428) (the foregoing excluding the Longview Debtors, collectively, the “Mepco Debtors”). The Longview Debtors’ principal offices are located at 966 Crafts Run Road, Maudsville, West Virginia 26541. The Mepco Debtors’ principal offices are located at 308 Dents Run Road, Morgantown, West Virginia 26501.

Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.

2. Venue is proper in this District pursuant to 28 U.S.C. § 1408.

3. The statutory bases for the relief requested herein are section 365 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9013-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

Relief Requested

4. By this Motion, the Debtors seek entry of an order substantially in the form attached hereto as **Exhibit A**: (a) authorizing the rejection of the Ash Disposal Contract, effective nunc pro tunc to the date hereof; and (b) granting related relief.

Background

5. On August 30, 2013 (the “Petition Date”), each of the Debtors filed a petition with this Court under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these chapter 11 cases, and no committees have been appointed or designated.

6. The Debtors and certain of their non-Debtor affiliates operate an integrated power generation company, which includes electric power generation, coal mining and processing, and

waste disposal operations. The Debtors operate through two primary business units: (a) Longview, whose primary asset is a 700 net megawatt supercritical coal-fired power generation facility located in Maudsville, West Virginia (the “Power Facility”); and (b) Mepco, a vertically integrated coal miner and processor with facilities located in southwestern Pennsylvania and northern West Virginia. As of the Petition Date, the Debtors have funded debt totaling approximately \$1 billion.

The Ash Disposal Contract

7. Pursuant to the Ash Disposal Contract, Coresco, LLC loads, transports, and places coal combustion byproducts generated at a coal-fired power plant operated by Allegheny at the Hatfields Ferry Power Station (“Hatfield Station”), a 1,710 megawatt facility located in Masontown, Pennsylvania. FirstEnergy Corporation (“FirstEnergy”), Allegheny’s corporate parent, began shutting down operations at the Hatfield Station in the Fall of 2013.² Additionally, on December 13, 2013, the Debtors received a letter (the “Hatfield Suspension Letter”) from Allegheny Energy, Inc., an affiliate of Allegheny and FirstEnergy, providing notice to the Debtors pursuant to that certain Amended and Restated Coal Sales Agreement, dated as of April 30, 2009 (the “Coal Sales Agreement”), between Allegheny and Mepco, LLC, an above-captioned Debtor, that all coal deliveries to Hatfield Station have been suspended by Allegheny Energy, Inc. until further notice. The Debtors have responded to the Hatfield Suspension Letter by sending Allegheny Energy, Inc. the letter attached hereto as **Exhibit B**.³ Additionally, the

² As set forth more fully in the Debtors’ *Disclosure Statement for the Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 441] (as amended from time to time, the “Disclosure Statement”), the Debtors also sell approximately 50 percent of coal mined by its Mepco subsidiaries to FirstEnergy.

³ As noted in the Debtors’ letter, and among other things, the Debtors reserve all rights on account of the Hatfield Suspension Letter. The Debtors are continuing to engage in settlement discussions with FirstEnergy regarding the Coal Sales Agreement and the Hatfield Suspension Letter at the time of filing this Motion. Should these negotiations prove unsuccessful, the Debtors may be before this Court in the near future to resolve any disputes.

Debtors have determined that the Ash Disposal Contract is no longer beneficial to the Debtors since there will be no coal combustion byproducts generated at Hatfield Station for the Debtors to load, transport or place in light of FirstEnergy's and Allegheny's determination to shut down operations at Hatfield Station. Accordingly, the Debtors have elected to reject the Ash Disposal Contract.⁴

Basis for Relief

I. Rejection of the Ash Disposal Contract Reflects the Debtors' Sound Business Judgment

8. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, "subject to the court's approval, may . . . reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). See Univ. Med. Cent. v. Sullivan (In re Univ. Med. Ctr.), 973 F.2d 1065, 1075 (3d Cir. 1992). For the benefit of the estate, a debtor may, under section 365 of the Bankruptcy Code, relieve itself of burdensome agreements where performance still remains. See Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.), 872 F.2d 36, 39–40 (3d Cir. 1989); see also Stewart Title Guar. Co. v. Old Republic Nat'l Ins. Co., 83 F.3d 735, 741 (5th Cir. 1996) (stating that section 365 "allows a [debtor] to relieve the bankruptcy estate of burdensome agreements which have not been completely performed" (citation omitted)).

9. The decision to assume or reject an executory contract or unexpired lease is a matter within the debtor's "business judgment." See Nat'l Labor Relations Bd. v. Bildisco & Bildisco (In re Bildisco), 682 F.2d 72, 79 (3d Cir. 1982) ("The usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the 'business judgment' test." (citation omitted)); see also In re Fed. Mogul Global, Inc., 293 B.R. 124, 126 (D. Del. 2003); In re HQ Global Holdings, Inc., 290 B.R. 507, 511 (Bankr. D. Del. 2003). The business

⁴ Rejection of the Ash Disposal Contract, in and of itself, will not impact the financial projections set forth in or attached to the Disclosure Statement.

judgment standard mandates that a court approve a debtor's business decision unless the decision is the product of bad faith, whim or caprice. See In re Trans World Airlines, Inc., 261 B.R. 103, 121 (Bankr. D. Del. 2001); see also In re Fed. Mogul Global, 293 B.R. at 126 (rejecting counterparty's argument that a finding of hardship is a prerequisite to application of the business judgment test); Summit Land Co. v. Allen (In re Summit Land Co.), 13 B.R. 310, 315 (Bankr. D. Utah 1981) (noting that, absent extraordinary circumstances, court approval of a debtor's decision to assume or reject an executory contract "should be granted as a matter of course").

10. The Debtors have satisfied the business judgment standard. With the assistance of their advisors, the Debtors closely analyzed the terms of their Ash Disposal Contract and determined that they are incompatible with the Debtors' business needs. Specifically, because Allegheny and FirstEnergy have announced their intention to shut down Hatfield Station, the Debtors have no business need for the Ash Disposal Contract. The Debtors have therefore elected to reject this contract.

II. Rejection of the Ash Disposal Contract Nunco Pro Tunc to the Date Hereof is Appropriate

11. The Debtors also respectfully submit that it is appropriate for the Court to order that the effective date of rejection of the Ash Disposal Contract is the date hereof. While section 365 of the Bankruptcy Code does not specifically address whether the Court may order rejection to be effective retroactively, courts have held that bankruptcy courts may, based on the equities of the circumstances, authorize rejection retroactive to a date prior to entry of the order authorizing such rejection. See In re Chi-Chi's, Inc., 305 B.R. 396, 399 (Bankr. D. Del. 2004) (acknowledging that a bankruptcy court may approve a rejection retroactive to the date the motion is filed after balancing the equities in the particular case); In re Fleming Cos., Inc., 304 B.R. 85, 96 (Bankr. D. Del. 2003) (stating that rejection has been allowed nunc pro tunc to the date of the motion).

12. Here, the balance of the equities favors the relief requested herein. The Debtors have determined that the Ash Disposal Contract is no longer beneficial to the Debtors' since there will be no coal combustion byproducts generated at Hatfield Station for the Debtors to load, transport or place in light of FirstEnergy's and Allegheny's determination to shut down operations at Hatfield Station. Moreover, Allegheny, the counterparty to the Ash Disposal Contract, will not be prejudiced unduly if the rejection is deemed effective as of the date hereof. Because FirstEnergy, Allegheny's corporate parent, has announced the closure of Hatfield Station, and because the Debtors received the Hatfield Suspension Letter from Allegheny's affiliate, Allegheny should expect the Debtors to reject the Ash Disposal Contract. Indeed, the Debtors have advised Allegheny that such rejection was likely forthcoming in the near term. For all of these reasons, Allegheny will have sufficient opportunity to act accordingly. In addition, Allegheny will be relieved of its own obligations under the Ash Disposal Contract. In sum, the Debtors respectfully submit that it is fair and equitable for the Court to hold that the Ash Disposal Contract is rejected as of the date hereof.

Notice

13. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the administrative agent under the Longview prepetition credit agreement, dated as of February 28, 2007 (as amended from time to time, the "Longview Credit Agreement"); (d) counsel for the administrative agent under the Longview Credit Agreement; (e) the collateral agent under the Longview Credit Agreement; (f) counsel for the collateral agent under the Longview Credit Agreement; (g) the administrative agent under that certain Senior Secured Superpriority Debtor-In-Possession Credit Agreement, dated as of November 27, 2013 (as amended from time to time, the "Longview DIP Credit Agreement");

(h) counsel for the administrative agent under the Longview DIP Credit Agreement; (i) counsel for the Backstoppers; (j) the United States Environmental Protection Agency; (k) the United States Attorney's Office for the District of Delaware; (l) the Office of the Attorney General for the State of West Virginia; (m) the Internal Revenue Service; (n) Allegheny, in its capacity as counterparty to the Ash Disposal Contract; (o) FirstEnergy, the corporate parent of Allegheny; and (p) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

14. No prior motion for the relief requested herein has been made to this or any other court.

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WHEREFORE, for the reasons set forth herein, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**: (a) authorizing the rejection of the Ash Disposal Contract, effective nunc pro tunc to the date hereof; and (b) granting related relief.

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Wilmington, Delaware
Dated: December 23, 2013

/s/ Zachary I. Shapiro

Daniel J. DeFranceschi (No. 2732)

Paul N. Heath (No. 3704)

Zachary I. Shapiro (No. 5103)

Marisa A. Terranova (No. 5396)

RICHARDS, LAYTON & FINGER, P.A.

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- and -

Richard M. Cieri (admitted *pro hac vice*)

Paul M. Basta, P.C. (admitted *pro hac vice*)

Ray C. Schrock, P.C. (admitted *pro hac vice*)

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Email: ryan.dahl@kirkland.com

Co-Counsel for the

Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
	)	Chapter 11
)	
LONGVIEW POWER, LLC, <u>et al.</u> , ¹	)	Case No. 13-12211 (BLS)
)	
Debtors.	)	(Jointly Administered)
)	
	)	Hearing Date: January 22, 2014, at 10:00 a.m. (ET)
	)	Objection Deadline: January 6, 2014, at 4:00 p.m. (ET)

NOTICE OF MOTION AND HEARING

PLEASE TAKE NOTICE that on December 23, 2013, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion for Entry of an Order Authorizing (A) the Rejection of a Certain Ash Disposal Contract Effective Nunc Pro Tunc to the Date Hereof and (B) Granting Related Relief* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, filed with the Clerk of the Bankruptcy Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801, and served upon and received by the undersigned attorneys for the Debtors on or before **January 6, 2014 at 4:00 p.m. (Eastern Standard Time)**.

PLEASE TAKE FURTHER NOTICE that a hearing to consider the Motion, if required, will be held before The Honorable Brendan L. Shannon, United States Bankruptcy

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification are as follows: (a) Longview Power, LLC (1860); and Longview Intermediate Holdings C, LLC (1008) (collectively, the “Longview Debtors”); and (b) Mepco Holdings, LLC (6654); Mepco Intermediate Holdings A, LLC (0502); Mepco Intermediate Holdings, LLC (4248); Mepco, LLC (3172); Coresco, LLC (6397); Dana Mining Company of Pennsylvania, LLC (8721); Dana Mining Company, LLC (4499); Mepco Conveyor, LLC (0477); Shannopin Materials LLC (1616); Border Energy, LLC (2798); and Alternate Energy, LLC (2428) (the foregoing excluding the Longview Debtors, collectively, the “Mepco Debtors”). The Longview Debtors’ principal offices are located at 966 Crafts Run Road, Maidsville, West Virginia 26541. The Mepco Debtors’ principal offices are located at 308 Dents Run Road, Morgantown, West Virginia 26501.

Judge for the District of Delaware, at the Bankruptcy Court, 824 North Market Street, 6th Floor, Courtroom 1, Wilmington, Delaware 19801 on **January 22, 2014 at 10:00 a.m. (Eastern Standard Time)**).

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

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Dated: December 23, 2013
Wilmington, Delaware

/s/ Zachary I. Shapiro

Daniel J. DeFranceschi (DE Bar No. 2732)
Paul N. Heath (DE Bar No. 3704)
Zachary I. Shapiro (DE Bar No. 5103)
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- and -

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*Co-Counsel for the
Debtors and Debtors in Possession*

EXHIBIT A

Proposed Form of Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

)	
)	
In re:	)	Chapter 11
)	
LONGVIEW POWER, LLC, <u>et al.</u> , ¹	)	Case No. 13-12211 (BLS)
)	
Debtors.	)	Jointly Administered
)	

**ORDER AUTHORIZING THE DEBTORS’ MOTION FOR ENTRY OF AN ORDER
AUTHORIZING (A) THE REJECTION OF A CERTAIN ASH DISPOSAL CONTRACT
EFFECTIVE NUNC PRO TUNC TO THE DATE OF THE MOTION, AND
(B) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”): (a) authorizing the rejection of that certain Material Handling Agreement, dated as of April 30, 2009, between Allegheny Energy Supply Company, LLC and Coresco, LLC (the “Ash Disposal Contract”), effective nunc pro tunc to the date of the Motion; and (b) granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: (a) Longview Power, LLC (1860); and Longview Intermediate Holdings C, LLC (1008) (collectively, the “Longview Debtors”); and (b) Mepco Holdings, LLC (6654); Mepco Intermediate Holdings A, LLC (0502); Mepco Intermediate Holdings, LLC (4248); Mepco, LLC (3172); Coresco, LLC (6397); Dana Mining Company of Pennsylvania, LLC (8721); Dana Mining Company, LLC (4499); Mepco Conveyor, LLC (0477); Shannopin Materials LLC (1616); Border Energy, LLC (2798); and Alternate Energy, LLC (2428) (the foregoing excluding the Longview Debtors, collectively, the “Mepco Debtors”). The Longview Debtors’ principal offices are located at 966 Crafts Run Road, Madsville, West Virginia 26541. The Mepco Debtors’ principal offices are located at 308 Dents Run Road, Morgantown, West Virginia 26501.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. Pursuant to section 365 of the Bankruptcy Code and Bankruptcy Rules 6006 and 9014, the Ash Disposal Contract is rejected effective nunc pro tunc to December 23, 2013.
3. The terms and conditions of this Order are immediately effective and enforceable upon its entry.
4. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

5. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2014
Wilmington, Delaware

THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Debtors' Response to the Hatfield Suspension Letter

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Ray C. Schrock, P.C.
To Call Writer Directly:
(212) 446-4828
ray.schrock@kirkland.com

601 Lexington Avenue
New York, New York 10022

(212) 446-4800

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Facsimile:
(212) 446-4900

December 23, 2013

VIA E-MAIL

James G. Mellody
Allegheny Energy, Inc.
800 Cabin Hill Drive
Greensburg, PA 15601

Re: Amended and Restated Coal Sales Agreement Effective April 30, 2009
(the "Agreement") between Allegheny Energy Supply Company, LLC
("Buyer") and MEPCO, LLC ("Mepco" or "Seller")

Dear Mr. Mellody:

By way of introduction, my firm is restructuring counsel to Mepco and its affiliates. I write on behalf of Seller to acknowledge and respond to your December 13, 2013 letter in which you state that, pursuant to Section 6.2 of the Agreement, Buyer will not be accepting any coal deliveries at the Hatfield Station as of January 1, 2014, which letter is attached to this letter at Exhibit A.

As further explained below, Mepco has five primary responses to your December 13 Letter:

First, Buyer is in breach of the Agreement and Mepco requests that Buyer immediately rectify all breaches of the Agreement;

Second, the amount of damages that Seller is due as a result of a breach of the Agreement (and termination thereof) is far greater than the amount which Buyer has expressed to Seller;

Third, Seller requests adequate assurance of future performance under the Agreement;

Fourth, as Seller is currently a debtor operating under the protection of chapter 11 of the United States Bankruptcy Code, it must take actions that are consistent with its fiduciary duties in its chapter 11 cases for benefit of the estate and its numerous stakeholders; and

Fifth, Seller would prefer a non-litigious resolution (and whatever actions Seller needs to take in its chapter 11 cases) and would therefore ask that Buyer immediately contact Seller's representative and Chief Restructuring Officer, Mr. Ray Dombrowski, to set up a meeting with

KIRKLAND & ELLIS LLP

Allegheny Energy, Inc
December 23, 2013
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Seller. It is Mepco's hope that these matters can be solved without the need for litigation, but company representatives from each side must meet in-person immediately to avoid litigation. Time is of the essence, and Mepco requests that this matter be given the highest attention within your organization to prevent the escalation of issues in an already tense situation.

Addressing these points in turn, Mepco was surprised to receive your letter because, as you know, there have been ongoing discussions with FirstEnergy Corporation ("FirstEnergy") regarding the resolution of a number of issues, of which the Agreement is merely one. And although Seller appreciates Buyer's stated willingness to meet to discuss opportunities to make up deliveries at a later date, Section 6.2 of the Agreement is not applicable to this situation as it was intended to address only temporary instances of the oversupply of inventory, which is how past pattern and practices had used this provision over the numerous years that FirstEnergy and Mepco have had a contractual relationship. Section 6.2 of the Agreement is clear insofar as it allows Buyer to manage inventories, but Section 6.2 does not allow Buyer to reduce its inventory levels to zero or refuse any delivery of coal. [REDACTED]

Moreover, given your acknowledgment that Hatfield Station is not operational, and the fact that we are not aware of any plan to return the plant to commercial operation in the near term, it unfortunately is clear that you do not intend to comply with your obligations under the Agreement. Given all facts and circumstances, Mepco has no choice but to consider your letter and actions at a minimum an anticipatory breach of the Agreement, and by your refusal to take deliveries as of January 1, 2014, you are in breach of the Agreement. [REDACTED]

In addition to the aforementioned breaches under the Agreement, Buyer also has failed to make substantial payments that put it in breach of the Agreement. First, Buyer has at this time failed to make the payment that was due pursuant to the payment terms of the Agreement on December 20, 2013. [REDACTED]

We are confident that the damages associated with this contract are significantly higher than the substantial amounts that your organization has conceded, and neither Mepco as an estate

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Allegheny Energy, Inc
December 23, 2013
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fiduciary for its creditors and the 600 employees and families that depend on it nor the creditors in Mepco's and its affiliates' chapter 11 proceeding will walk away from such a substantial amount of money due under the Agreement.

Seller also requests adequate assurance of future performance under the Agreement. Specifically, to provide Seller with adequate assurances that Buyer intends to meet the Annual Base Amount of coal purchases under the Agreement during 2014, please contact Ray Dombrowski immediately to establish a schedule for make-up deliveries that will ensure Buyer purchases the Annual Base Amount, as well as to discuss the other outstanding breaches. Seller will otherwise consider Buyer's suspension of coal deliveries to be an anticipatory repudiation of the Agreement and will take any and all steps necessary to protect its rights, including, but not limited to, filing a lawsuit in the United States Bankruptcy Court for the District of Delaware, which presides over Mepco's and its affiliates' bankruptcy cases, [REDACTED]

All of this said, it is Mepco's hope that these matters can be solved without the need for litigation, but company representatives from each side must meet in-person immediately to avoid litigation. As you may know, Longview and Mepco have filed a joint plan of reorganization in their chapter 11 cases and intend to emerge from Chapter 11 protection in the first quarter of 2014 as a well-capitalized enterprise with very little debt and substantial new capital. It is Mepco's hope and desire that it remain contractual partners with FirstEnergy as part of Mepco's reorganization. As part of this restructuring process, Mepco must make assumption or rejection decisions regarding its major contracts in the very near term, including with respect to the various contracts with FirstEnergy. In that regard and in light of your recent correspondence, please be advised that we intend to file a motion to reject the Hatfield Station ash disposal contract in Mepco's chapter 11 cases very soon. We hope to avoid further litigation regarding the Agreement, but we will not hesitate to protect the estates' interests.

Finally, Mepco reserves all rights and remedies available under the Agreement and applicable law, including but not limited to contract rejection rights and remedies available to Mepco under the United States Bankruptcy Code. The points in this letter should not be considered an exhaustive list of all breaches under the Agreement or in any way limit any right or remedy available in law or equity.

For the benefit of both organizations, please contact Ray Dombrowski immediately to address the issues in this letter and set up an in-person meeting.

Sincerely,

/s/ Ray C. Schrock, P.C.

KIRKLAND & ELLIS LLP

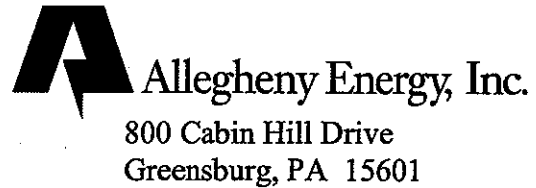
Allegheny Energy, Inc
December 23, 2013
Page 4

Ray C. Schrock, P.C.

cc: Ray Dombrowski, Chief Restructuring Officer
Jeffery Keffer, Chief Executive Officer

EXHIBIT A

December 13, 2013 Letter



December 13, 2013

President
MEPCO, LLC
308 Dents Run Road
Morgantown, WV 26501

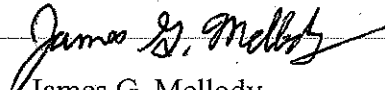
Re: Amended and Restated Coal Sales Agreement Effective April 30, 2009 (the "Agreement") between Allegheny Energy Supply Company, LLC ("Buyer") and MEPCO, LLC ("Seller")

Dear Sir or Madam,

Please be advised all units at the Hatfield Station have been shut down on or about October 9, 2013 and that all coal deliveries to the plant have been suspended. Pursuant to Section 6.2 of the above-mentioned Agreement, Buyer is hereby notifying Seller that no coal is being inventoried at the Hatfield Station and any further deliveries of coal would take the inventory above the desired level. Therefore, Buyer is hereby not accepting deliveries when the Agreement recommences January 1, 2014 until further notice. Buyer is willing, at a mutually agreed upon time, to meet with Seller to discuss opportunities to make-up deliveries at a later date. Buyer reserves all rights and/or remedies available to it under the Agreement, or available at law or in equity regarding this matter.

We look forward to meeting with you and discussing this matter further.

Very truly yours,


James G. Mellody
VP, Fuel and Unit Dispatch