

0100465025

McGUIRE WOODS  
BATTLE & BOOTHE

Transpotomac Plaza  
Suite 1000, 1199 North Fairfax Street  
Alexandria, VA 22314-1437

The Blaustein Building  
One North Charles Street  
Baltimore, MD 21201-3793

Court Square Building  
Post Office Box 1288  
Charlottesville, VA 22902-1288

8280 Greensboro Drive  
Suite 900, Tysons Corner  
McLean, VA 22102-3892

One James Center  
901 East Cary Street  
Richmond, Virginia 23219-4030

Phone: (804) 775-1000 (Voice/TDD)  
Fax: (804) 775-1061

December 22, 1994

World Trade Center  
Suite 9000, 101 West Main Street  
Norfolk, VA 23510-1655

The Army and Navy Club Building  
1627 Eye Street, N.W.  
Washington, DC 20006-4007

250 Avenue Louise, Bte. 64  
1050 Brussels, Belgium

Post Office Box 4930  
Bahnhofstrasse 3  
8022 Zurich, Switzerland

RECORDATION NO. 17642-B FILED 1425

Office of the Secretary  
Interstate Commerce Commission  
Twelfth Street and  
Constitution Avenue, N.W. INTERSTATE COMMERCE COMMISSION  
Recordation Unit  
Room 2303  
Washington, D.C. 20423

DEC 23 1994 - 11 25 AM

LIENICAL SECTION  
DEC 23 11 31 AM '94

Letter of Transmittal

Dear Secretary:

I enclose an original and one counterpart of the documents described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

The first document to be recorded is an Instrument of Assignment, a secondary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177, dated December 21, 1994 (the "First Secondary Document"). The second document to be recorded is a Step-In Rights Agreement and Assignment of Lease, also a secondary document, dated December 21, 1994 (the "Second Secondary Document"). The First Secondary Document is connected to the Lease Agreement, the primary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177 (the "Primary Document"), dated as of December 27, 1991, reference number 17642. The Second Secondary Document is connected to the Primary Document, reference number 17642, and the First Secondary Document. Please cross reference (i) the First Secondary Document to the Primary Document and (ii) the Second Secondary Document to the Primary Document and the First Secondary Document. We request that each the First Secondary Document and the Second Secondary Document be cross-indexed under the name of Keycorp Leasing Ltd., the Lessor under the Primary Document.

The names and addresses of the parties to the secondary documents are as follows:

*Counterparts  
M. J. [unclear]*

I. First Secondary Document.

Assignor: Westmoreland Coal  
Company

Address: 700 The Bellevue ,  
200 South Broad Street  
Philadelphia, Pennsylvania 19102

Assignee: Consol of Kentucky Inc.

Address: 1800 Washington Road  
Pittsburgh, Pennsylvania 15201

II. Second Secondary Document.

Assignor: Consol of Kentucky Inc.

Address: 1800 Washington Road  
Pittsburgh, Pennsylvania 15201

Assignee: Westmoreland - LG&E  
Partners

Address: 300 Preston Avenue, Fifth Floor  
Charlottesville, Virginia 22902

A description of the equipment covered by the First Secondary Document and the Second Secondary Document is set forth on Schedule I attached hereto.

A fee of \$21 is enclosed. Please return stamped copies and any other copies of the First Secondary Document and the Second Secondary Document to Stephan J. Willen, Esq., McGuire, Woods, Battle & Boothe, 901 East Cary Street, One James Center, Richmond, Virginia 23219.

A short summary of the First Secondary Document to appear in the index follows:

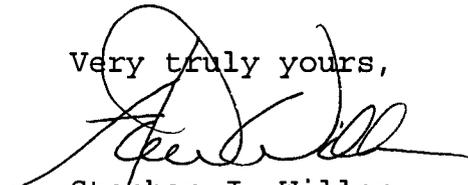
An Instrument of Assignment between Westmoreland Coal Company, 700 The Bellevue, 200 South Broad Street, Philadelphia, Pennsylvania 19102 and Consol of Kentucky Inc., 1800 Washington Road, Pittsburgh, Pennsylvania 15201, dated December 21 1994 and covering, among other things, 95 100-ton steel 3805 cubic foot triple hopper cars with corresponding identification numbers of WCCX 10001 - 10095 and connected to the Lease Agreement with Recordation No. 17642.

Office of the Secretary  
December 22, 1994  
Page 3

A short summary of the Second Secondary Document to appear in the index follows:

A Step-In Rights Agreement and Assignment of Lease by Consol of Kentucky Inc., 1800 Washington Road, Pittsburgh, Pennsylvania 15201, in favor of Westmoreland - LG&E Partners, 300 Preston Avenue, Fifth Floor, Charlottesville, Virginia 22902 dated as of December 21, 1994 and covering, among other things, 95 100-ton steel 3805 cubic foot triple hooper cars with corresponding identification numbers of WCCX 10001 - 10095 and connected to the Lease Agreement with Recordation No. 17642 and the Instrument of Assignment, previously recorded on the date hereof.

Very truly yours,



Stephan J. Willen

Enclosure

u \1040\westmore\icc ltr

SCHEDULE 1

SCHEDULE OF RAILCARS TO BE DELIVERED

Open Top Coal Hopper RailCars

Quantity Units	Serial Numbers	Lessor's Cost Per Unit	Aggregate Lessor's of Cost
95	See Attachment 1	\$41,348.64	\$3,928,120.80

Attachment 1

Identification Numbers of Railcars

WCCX 10001-10095

# Interstate Commerce Commission

Washington, D.C. 20423

12/23/94

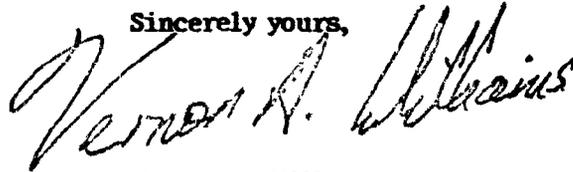
OFFICE OF THE SECRETARY

Stephan J. Willin  
McGuire Woods Battle & Boothe  
One James Center  
901 East Cary Street  
Richmond, Virginia 23219-4030

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/23/94 at 11:35AM, and assigned recordation number(s). 17642- B

Sincerely yours,



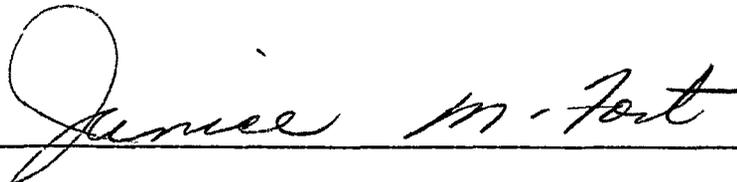
Vernon A. Williams  
Secretary

Enclosure(s)

(0100465025)

\$ 21.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature



RECORDATION NO. 17642-B FILED 1425

DEC 23 1994 -11 25 AM

INTERSTATE COMMERCE COMMISSION

Instrument of Assignment

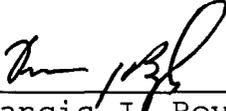
WHEREAS, pursuant to the Asset Purchase Agreement dated July 28, 1994 (as amended, the "Agreement") among Westmoreland Coal Company, a Delaware corporation ("WCC"), Criterion Coal Company, a Delaware corporation ("CCC"), Kentucky Criterion Coal Company, a Delaware corporation ("KCCC"), Deane Processing Company, a Delaware corporation ("DPC" and together with CCC and KCCC, "Seller") and CONSOL of Kentucky Inc., a Delaware corporation ("Buyer"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller does hereby sell, assign, transfer, convey and deliver unto Buyer, its successors and assigns, each and all of the Purchased Assets (as such term is defined in the Agreement), intending hereby to convey all of the right, title and interest of Seller therein; provided, however, as to any lease, contract, agreement, permit or other authorization included in the Purchased Assets which cannot be sold, transferred, assigned, conveyed or delivered effectively without the consent of a third party, which consent has not been obtained, this instrument shall be of no force or effect until such requisite consent is obtained, whereupon this instrument shall become of full force and effect with respect thereto.

Seller hereby covenants and agrees to and with Buyer, its successors and assigns, to do, execute, acknowledge and deliver to, or to cause to be done, executed, acknowledged and delivered to, Buyer, its successors and assigns, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances that may be reasonably requested by Buyer for the better selling, assigning, transferring, conveying, delivering, assuring and confirming to Buyer, its successors or assigns, any or all of the Purchased Assets.

This Instrument of Assignment shall be binding upon the successors and assigns of Seller and shall inure to the benefit of the successors and assigns of Buyer.

IN WITNESS WHEREOF, each of CCC, KCC, and DPC has caused this Instrument of Assignment to be duly executed and delivered this 21st day of December, 1994.

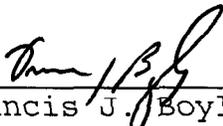
CRITERION COAL COMPANY

By:   
Name: Francis J. Boyle  
Title: Vice President -  
Finance & Treasurer

KENTUCKY CRITERION COAL  
COMPANY

By:   
Name: Francis J. Boyle  
Title: Vice President -  
Finance & Treasurer

DEANE PROCESSING COMPANY

By:   
Name: Francis J. Boyle  
Title: Vice President -  
Finance & Treasurer

## Instrument of Assignment

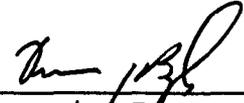
WHEREAS, pursuant to the Asset Purchase Agreement dated July 28, 1994 (as amended, the "Agreement") among Westmoreland Coal Company, a Delaware corporation ("WCC"), Criterion Coal Company, a Delaware corporation ("CCC"), Kentucky Criterion Coal Company, a Delaware corporation ("KCCC"), Deane Processing Company, a Delaware corporation ("DPC" and together with CCC and KCCC, "Seller") and CONSOL of Kentucky Inc., a Delaware corporation ("Buyer"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller does hereby sell, assign, transfer, convey and deliver unto Buyer, its successors and assigns, each and all of the Purchased Assets (as such term is defined in the Agreement), intending hereby to convey all of the right, title and interest of Seller therein; provided, however, as to any lease, contract, agreement, permit or other authorization included in the Purchased Assets which cannot be sold, transferred, assigned, conveyed or delivered effectively without the consent of a third party, which consent has not been obtained, this instrument shall be of no force or effect until such requisite consent is obtained, whereupon this instrument shall become of full force and effect with respect thereto.

Seller hereby covenants and agrees to and with Buyer, its successors and assigns, to do, execute, acknowledge and deliver to, or to cause to be done, executed, acknowledged and delivered to, Buyer, its successors and assigns, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances that may be reasonably requested by Buyer for the better selling, assigning, transferring, conveying, delivering, assuring and confirming to Buyer, its successors or assigns, any or all of the Purchased Assets.

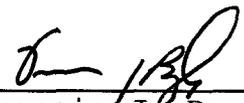
This Instrument of Assignment shall be binding upon the successors and assigns of Seller and shall inure to the benefit of the successors and assigns of Buyer.

IN WITNESS WHEREOF, each of CCC, KCC, and DPC has caused this Instrument of Assignment to be duly executed and delivered this 21st day of December, 1994.

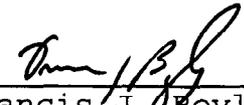
CRITERION COAL COMPANY

By:   
Name: Francis J. Boyle  
Title: Vice President -  
Finance & Treasurer

KENTUCKY CRITERION COAL  
COMPANY

By:   
Name: Francis J. Boyle  
Title: Vice President -  
Finance & Treasurer

DEANE PROCESSING COMPANY

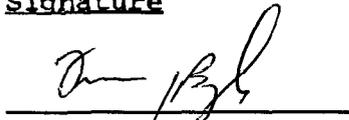
By:   
Name: Francis J. Boyle  
Title: Vice President -  
Finance & Treasurer

CERTIFICATE

The undersigned, the duly elected, qualified and acting Secretary of Westmoreland Coal Company (the "Corporation") hereby certifies that:

1. Attached hereto as Exhibit A is a copy of the resolutions of the Board of Directors of the Corporation authorizing the execution and delivery of the Asset Purchase Agreement dated July 28, 1994 among Westmoreland Coal Corporation, Criterion Coal Company, Kentucky Criterion Coal Company, Deane Processing Company and CONSOL of Kentucky Inc. and each of the agreements and instruments executed in connection therewith or delivered pursuant thereto and the transactions contemplated thereby.

2. The persons named below are and at all times since July 28, 1994 have been duly elected and qualified incumbents of the respective offices of the Corporation set forth at the left of their respective names, and the signatures at the right of said names respectively, are the genuine signatures of said officers:

<u>Title</u>	<u>Name</u>	<u>Specimen Signature</u>
Senior Vice President	Francis J. Boyle	

IN WITNESS WHEREOF, I have executed this Certificate  
this 21st day of December, 1994.

Philip D. Weinstock

The undersigned, the Senior Vice President of the Corporation, hereby certifies that Philip D. Weinstock is and at all times since July 28, 1994 has been the duly elected Secretary of the Corporation and that the signature above is his genuine signature.

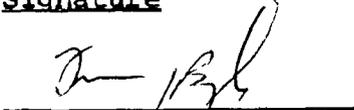
Don Byls

CERTIFICATE

The undersigned, the duly elected, qualified and acting Secretary of Westmoreland Coal Company (the "Corporation") hereby certifies that:

1. Attached hereto as Exhibit A is a copy of the resolutions of the Board of Directors of the Corporation authorizing the execution and delivery of the Asset Purchase Agreement dated July 28, 1994 among Westmoreland Coal Corporation, Criterion Coal Company, Kentucky Criterion Coal Company, Deane Processing Company and CONSOL of Kentucky Inc. and each of the agreements and instruments executed in connection therewith or delivered pursuant thereto and the transactions contemplated thereby.

2. The persons named below are and at all times since July 28, 1994 have been duly elected and qualified incumbents of the respective offices of the Corporation set forth at the left of their respective names, and the signatures at the right of said names respectively, are the genuine signatures of said officers:

<u>Title</u>	<u>Name</u>	<u>Specimen Signature</u>
Senior Vice President	Francis J. Boyle	

IN WITNESS WHEREOF, I have executed this Certificate  
this 21st day of December, 1994.

Philip D. Weinstock

The undersigned, the Senior Vice President of the Corporation, hereby certifies that Philip D. Weinstock is and at all times since July 28, 1994 has been the duly elected Secretary of the Corporation and that the signature above is his genuine signature.

Don Byls

STEP-IN RIGHTS AGREEMENT AND ASSIGNMENT OF LEASE

dated as of December 21, 1994

by

CONSOL OF KENTUCKY INC.

in favor of

WESTMORELAND - LG&E PARTNERS

## STEP-IN RIGHTS AGREEMENT AND ASSIGNMENT OF LEASE

THIS STEP-IN RIGHTS AGREEMENT AND ASSIGNMENT OF LEASE (as amended, supplemented or modified from time to time, this "Assignment") is dated as of December 21, 1994 between CONSOL OF KENTUCKY INC., a Delaware corporation (the "Assignor") and WESTMORELAND - LG&E PARTNERS, a Virginia general partnership (the "Assignee").

A. Assignee and TECO Coal Corporation entered into a Coal Supply Agreement dated as of June 21, 1993 (as the same may be amended, supplemented or modified from time to time, the "ROVA I Contract") with respect to the supply of coal to Assignee's approximately 165 megawatt Roanoke Valley I coal-fired cogeneration project, which grants Assignee step-in rights with respect to the Rail Transportation Agreement (as hereinafter defined) under certain circumstances. Assignee and TECO Coal Corporation entered into a Coal Supply Agreement dated as of October 15, 1993 (as the same may be amended, supplemented or modified from time to time, the "ROVA II Contract") with respect to the supply of coal to Assignee's approximately 44 megawatt Roanoke Valley II coal-fired cogeneration project.

B. Assignor has assumed the obligations of Westmoreland Coal Company ("WCC"), Kentucky Criterion Coal Company ("KCC") and Westmoreland Coal Sales Company ("WCSC") (collectively, the "Westmoreland Parties") under (i) a Rail Transportation Agreement effective as of May 17, 1991, as amended by Amendments Nos. 1, 2 and 3 (as now or hereafter amended, the "Rail Transportation Agreement") for the transportation of coal to the facility which grants Assignee step-in rights under certain circumstances, (ii) a Lease dated as of December 27, 1991, including Supplement No.1 thereto, between WCC and Keycorp Leasing Ltd., a Delaware corporation (the "Lessor"), pursuant to which the Assignor, as assignee of the Westmoreland Parties' obligations, leases 95 railcars from the Lessor, which will be used by Assignor to provide Industry Cars under the Rail Transportation Agreement, and (iii) the Three Party Agreement dated as of June 21, 1993, and the Three Party Agreement (ROVA II), each among the Westmoreland Parties, TECO Coal and Credit Suisse, as Agent under the Credit Agreement defined below, pursuant to which Assignor, as assignee of the Westmoreland Parties' obligations, has agreed to grant to Assignee step-in rights with respect to the Railcars and the Lease for use in connection with the Rail Transportation Agreement, and to assign its right and interest in the Lease to the Assignee.

ARTICLE I  
DEFINITIONS

**Section 1.1. Definitions.** Terms defined in the ROVA I Contract, the ROVA II Contract, and/or the Credit Agreement, as the case may be, and not otherwise defined herein shall have, as used herein, the respective meanings provided for therein. In addition, the terms as used herein, shall have the following meanings:

"Collateral" shall mean all of Assignor's right, title and interest in the Lease and the Income assigned to Assignee as security pursuant to Section 3.1 hereof.

"KCC Consent" shall mean the Consent and Agreement among Lessor, Hitachi Credit America Corp., Project Owner, TECO Coal and Agent, as amended, supplemented or modified from time to time.

"Credit Agreement" shall mean the Amended and Restated Construction and Term Loan Agreement, dated as of December 1, 1993, among Westmoreland-LG&E Partners, as Borrower, Credit Suisse, National Westminster Bank PLC, the Bank of Nova Scotia and each Purchasing Lender, as Lenders, the Prudential Insurance Company of America and each Purchasing Institutional Lender, as Institutional Lenders, the Prudential Insurance Company of America, as Institutional Agent, Credit Suisse, New York Branch, as the Issuing Bank, Credit Suisse, National Westminster Bank PLC, The Bank of Nova Scotia and the Sumitomo Bank, Limited, New York Branch, as Co-Agents, and Credit Suisse, as Agent.

"Income" shall mean all of the benefits, revenues, security deposits, profits and other sums now or hereafter due, or to which the Assignor may now be or hereafter become entitled, arising from the Leased Railcars, whether or not yet earned by performance.

"Lease" means the Lease dated as of December 27, 1991 between the Assignor and the Lessor, including Supplement No.1 thereto, as such Lease may be amended, supplemented or modified from time to time.

"Leased Railcars" means the 95 railcars leased by Assignor from the Lessor pursuant to the terms and conditions of the Lease.

"Step-In Notice" shall mean, with respect to the ROVA I Contract, a Step-In Notice as defined in Section 23.12 of the ROVA I Contract, and with respect to the ROVA II Contract, a Step-In Notice as defined in Section 23.12 of the ROVA II Contract, copies of which sections are attached hereto as Exhibit A.

ARTICLE II  
STEP-IN RIGHTS

**Section 2.1. Step-In Rights.** Assignor hereby grants to Assignee, from and after the occurrence of an event described in Section 6.1 hereof, the right and license to exercise all of Assignor's rights under the Lease or with respect to the Railcars and Income (the "Step-in Rights"), including but not limited to the rights set forth in Section 6.4.(a) hereof.

**Section 2.2. Cooperation.** Assignor shall cooperate with Assignee in connection with the exercise by Assignee of the Step-In Rights, and shall provide such further assurances with respect to such rights as shall be necessary or appropriate in order for Assignee effectively to exercise such rights.

ARTICLE III  
THE ASSIGNMENT

**Section 3.1. The Assignment.** Assignor hereby grants and assigns to the Assignee, as security for the performance of the "Obligations" (as defined below), all of the Assignor's right, title and interest in the Lease and the Income. This Assignment constitutes an absolute, present and irrevocable assignment and shall be fully operative in accordance with its terms without any further action by the parties hereto.

**Section 3.2. Security for Obligations.** This Assignment secures the performance of the obligations of Assignor under Section 2.1 hereof (all such obligations being herein referred to as the "Obligations"). This Assignment is granted as security only and shall not subject the Assignee to, or transfer or in any way affect or modify, any obligation or liability of the Assignor with respect to the Lease or any transaction in connection therewith.

**Section 3.3. Termination of Assignment.** This Assignment shall terminate and all rights in the Lease and Income shall revert to the Assignor upon the 20th anniversary of the Commercial Operations Date under the ROVA II Contract. Upon any such termination of this Assignment, the Assignee will, at the Assignor's expense, execute and deliver to the Assignor such documents as the Assignor shall reasonably request to evidence the termination of this Assignment.

**Section 3.4. Security Interest Absolute.** All rights of Assignee hereunder, the security interest granted herein and all obligations of Assignor hereunder, shall be absolute and unconditional irrespective of:

(i) any lack of validity or enforceability of this Agreement, the Collateral or any other agreement or instrument relating thereto;

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any amendment or waiver of or any consent to any departure from the Lease or this Agreement; or

(iii) any exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to or departure from any guaranty, for all or any of the Obligations.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES

Section 4.1. Representations. Assignor represents and warrants as follows:

(a) Assignor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is in good standing in all places where necessary in light of the business it conducts and the properties it owns.

(b) Assignor has the necessary corporate power, corporate authority and legal right to execute, deliver and perform the Lease and this Assignment, and the execution and delivery by Assignor of the Lease and this Consent to Assignment and the performance of its respective obligations thereunder and hereunder have been duly authorized by all necessary corporate action and do not and will not (i) require any consent or approval of any shareholder of Assignor except for those approvals which have been duly obtained and are in full force and effect, (ii) violate the corporate charter or by-laws of Assignor or any provision of any law, rule, regulation, or any order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Assignor, (iii) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which Assignor is a party or by which it or its properties may be bound or affected, or (iv) result in, or require, the creation or imposition of any lien, security interest, change or encumbrance upon or with respect to any of the properties now owned or hereafter acquired by Assignor.

(c) This Assignment has been duly executed and delivered and this Assignment and the Lease constitutes a valid and binding obligation of Assignor.

(d) No consent or approval of, or other action by or any notice or filing with, any court or administrative or governmental body (except those previously obtained) is required in connection with the execution and delivery of this Assignment or the performance by Assignor of its respective obligations thereunder or hereunder. Assignor has obtained all permits, licenses, approvals, consents and exemptions with respect to the performance of its obligations under the Lease and this Assignment required by applicable laws, statutes, rules and regulations in effect as of the date hereof.

(e) Assignor is not in default with respect to the Lease and has no knowledge, as of the date of execution hereof, of any claims or rights of set-off by Assignor or by any of its affiliates or parent against Assignor.

(f) There are no proceedings pending or, to best of Assignor's knowledge after due inquiry, threatened against or affecting Assignor in any court or before any governmental authority or arbitration board or tribunal (whether or not purportedly on behalf of Assignor) which may result in a material or adverse effect upon the property, business, prospects, profits or condition (financial or otherwise) of Assignor, or the ability of Assignor to perform its obligations under the Lease or this Assignment; and Assignor is not in default with respect to any order of any court, governmental authority or arbitration board or tribunal.

(g) The grant herein of a security interest in the Collateral creates a legal, valid and perfected first priority security interest in the Collateral, subject, however, to the rights of TECO Coal under the Three Party Agreement.

(h) Assignor shall immediately notify Assignee of any claim against the Collateral adverse to the interest of Assignee or the Secured Parties.

(i) Assignor's chief executive office, principal place of business and the office where Assignor keeps its records regarding the Collateral and the originals of the Assigned Agreements are each located in the Commonwealth of Pennsylvania, at the address set forth in Section 7.1 hereof, and such address is the location of the sole office or place of business maintained by Assignor as of the date hereof. Assignor shall notify Assignee immediately in writing of any change in the location of its chief executive office, principal place of business or the office where such records and originals are kept, or the establishment by Assignor of any other office or place of business, or the adoption or change of its name or any trade name or fictitious business name and, upon written request of Assignee, shall execute any additional documents or certificates necessary to reflect the

adoption of or change in its name or any trade name or fictitious business name.

(j) Assignor agrees that from time to time, at its expense, Assignor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary, or that Assignee may reasonably request, in order to perfect and protect the security interest granted or purported to be granted hereunder in the Collateral or to enable Assignee to exercise and enforce its rights and remedies with respect to the Collateral.

(k) Assignor will keep and maintain at its own cost and expense satisfactory and complete records of the Collateral. Assignor will furnish to Assignee from time to time such reports in connection with the Collateral as Assignee may reasonably request, all in reasonable detail. Subject to Section 6.11 of the Credit Agreement, Assignee and the Secured Parties may inspect the Railcars at any reasonable time and upon reasonable notice, wherever located.

(l) Assignor will not create, incur or permit to exist, will defend the Collateral against, and will take such other action as is necessary to remove, any lien or claim on or to the Collateral, other than the security interest in favor of TECO Coal referred to above, and will defend the right, title and interest of Assignee in and to any of the Collateral against the claims and demands of all persons whomsoever.

## ARTICLE V COVENANTS

Section 5.1. Filing; Further Assurances. The Assignor will cause this Assignment to be duly filed and recorded and at all times hereafter maintain such filing with the Interstate Commerce Commission in accordance with 49 U.S.C. §10321, 49 U.S.C. §11303 and 5 U.S.C. §559 and pursuant to the filing requirements of 49 C.F.R. §1177.

Section 5.2. Further Assignments or Amendments. The Assignor shall not, without the prior written consent of the Assignee, (i) make any further assignment of its right, title and interest under the Lease or any part thereof except to TECO Coal, or (ii) amend, supplement, renew, surrender or terminate, or permit the amendment, supplementation, renewal, surrender or termination of the Lease.

Section 5.3. Performance of Obligations. The Assignor shall faithfully comply with its obligations under the terms of the Lease and shall keep the Lease in full force and effect.

**Section 5.4. Change in Law.** The Assignor will promptly notify the Assignee in writing of any change in law known to it (and will use its best efforts to become aware of any such change in law) which (i) adversely affects or will adversely affect this Assignment or (ii) requires or will require a change in the procedures to be followed in order to maintain and protect this Assignment.

**Section 5.5. Consent.** The Assignor hereby consents to the assignment of Assignee's rights under this Assignment to Credit Suisse, as Agent, pursuant to the Credit Agreement and the Security Documents (as defined therein), and to the exercise of any or all of the Assignee's rights hereunder by the Agent on behalf of the Secured Parties (as defined in the Credit Agreement).

**Section 5.6. Acknowledgment of Assignee's Obligations and Rights.** Assignee has no obligation hereunder to extend credit to Assignor or any contractor to Assignor at any time for any purpose. Assignee shall have no obligation to Assignor under the Lease or this Assignment until such time as Assignee notifies Assignor in writing of Assignee's election to exercise its rights hereunder. If Assignor defaults in the performance of its covenants under the Lease or hereunder, the Secured Parties under the Credit Agreement may have the right, inter alia, to (a) declare all amounts due to the Secured Parties under the Loan Instruments or any of the Security Documents immediately due and payable, (b) take possession of the Facilities and complete the same, and (c) sell the Facilities and any purchaser at such sale shall succeed to Assignee's rights hereunder; subject to Assignee's compliance with the provisions of the Lease and the terms of this Assignment, Assignor shall cooperate with the Secured Parties in their exercise of such rights.

## ARTICLE VI EXERCISE OF STEP-IN RIGHTS; DEFAULT; REMEDIES

**Section 6.1. Exercise of Step-In Rights.** Assignee shall have the right to exercise the Step-In Rights if any of the following events (the "Step-In Events") occur:

(i) if the ROVA I Contract or ROVA II Contract is in effect, an event entitling Assignee to give a Step-In Notice; or

(ii) if either the ROVA I Contract or ROVA II Contract is not in effect, the occurrence of an Event of Default by Industry under the terms of the Transportation Agreement.

**Section 6.2. Events of Default.** It shall be an "Event of Default" under this Assignment if any Step-In Event occurs and Assignor fails to permit Assignee to exercise the Step-In Rights or Assignee is otherwise prevented from exercising the Step-In Rights.

**Section 6.3. Surrender of Possession or Control.** Upon the occurrence of a Step-In Event or an Event of Default, the Assignor shall, upon demand of the Assignee, subject to the terms of the Lease and the KCL Consent, promptly surrender to the Assignee, or its employees or agents, the actual possession and control of any one or all of the Leased Railcars and all other rights or interest under the Lease (the "Assumed Interests"). If the Assignor shall fail, upon demand, to surrender any Assumed Interest, the Assignee may obtain a judgment or decree requiring the Assignor to surrender immediate possession of the same.

**Section 6.4. Right to Manage.**

(a) Upon taking possession or control of any Assumed Interest pursuant to Section 6.3 of this Assignment, the Assignee may use, manage, operate and control the Assumed Interests pursuant to and in accordance with the Lease, and, in so doing, shall have access to the books, papers and accounts of the Assignor relating to such Assumed Interests and may collect all moneys owed pursuant to such Assumed Interests. In addition, to the extent permitted under the Lease or as otherwise agreed between Assignee and Lessor, the Assignee may (i) maintain and restore the Assumed Interests and make such repairs, additions and improvements thereto and thereon, and purchase or otherwise acquire such additional fixtures, equipment and other property as it may deem necessary to facilitate the operation of business under the Lease; (ii) contest or compromise any claim or encumbrance against the Assumed Interests; (iii) employ such counsel, accountants, contractors and other persons as any of them shall deem necessary to assist it; (iv) perform all acts required of the Assignor with respect to the Assumed Interests, including acts required of it under the Lease; and (v) exercise all of the rights and powers which the Assignor possessed with respect to the Assumed Interests to the same extent as the Assignor could have exercised the same.

(b) For the purpose of carrying out the provisions of Section 6.4(a) of this Assignment, the Assignor hereby irrevocably appoints the Assignee the true and lawful attorney-in-fact for the Assignor and authorizes it to perform any act described in Section 6.4(a) and any and all actions necessary and incidental thereto. This power of attorney is a power coupled with an interest which cannot be revoked.

**Section 6.5. Right to Cure Default.** If any default shall be threatened or shall occur with respect to the Assignor's

obligations hereunder or under the Lease, the Assignee shall have the right (without any obligation to do so and without awaiting the expiration of any grace period under the Lease) to take such action as the Assignee deems necessary or appropriate to prevent or cure such default, and any amounts expended by the Assignee in preventing curing such defaults, together with interest thereon at the rate set for a default under the Coal Contract, shall be payable on demand and shall be secured by this Assignment.

**Section 6.6. Limitation of Assignee's Liability; Indemnification.** The assignment hereunder of the Lease to the Assignee and, except as expressly set forth in the Consent and Agreement among Lessor, Assignee, TECO Coal and Credit Suisse, any exercise by the Assignee of its remedies provided hereunder is not intended to impose and shall not impose on the Assignee any liability with respect to, and the Assignee shall not be obligated to perform, any of the Assignor's obligations under the Lease. The Assignor shall indemnify, defend and hold the Assignee harmless from and against any liability, claims, damages and costs (including attorneys' fees) arising from the Lease and the Assignor's obligations thereunder.

**Section 6.7. Right to Collect; Application of Sums Collected.** The Assignee shall be entitled, upon exercising its Step-In Rights and an Event of Default and after notice to the Assignor, to collect and retain the Income during any period that Assignee has possession of the Leased Railcars. Any sums collected by the Assignee pursuant to the provisions of this Assignment shall, after deducting therefrom any amount expended pursuant to the provisions of Sections 6.4 or 6.5, be applied first, to the payment of any amounts incurred by Assignee in connection with the Lease, the Railcars or the exercise of its rights hereunder and second, to Assignee, the balance of such proceeds. The Assignee's acceptance of this Assignment, the exercise of its rights hereunder and the application of any amount collected hereunder as set forth above shall not be deemed to cure or waive any Event of Default hereunder, invalidate any action taken pursuant thereto or preclude the Assignee from exercising any other right or remedy it may have been granted under any of the documents in connection with this Assignment.

**Section 6.8. Additional Remedies.** In addition to all other rights and remedies provided for herein or otherwise available to it, Assignor shall be entitled, upon the occurrence of an Event of Default, to exercise in respect of the Collateral, all the rights and remedies of a secured party after default under the Code.

ARTICLE VII  
MISCELLANEOUS

**Section 7.1. Notices.** Any notice to be given under this Assignment shall be in writing and shall be deemed to have been given (x) when presented personally, (y) when transmitted by telecopy to the numbers specified below, or (z) when received, if deposited in a regularly maintained receptacle for the United States Postal Service, postage prepaid, registered or certified, return receipt requested, addressed as indicated below (or such other address as a party may have specified by written notice delivered in accordance herewith). Transmission by telecopy shall constitute provision of notice under this Agreement only if receipt thereof is acknowledged by the intended recipient thereof:

(i) If to Assignee:

WESTMORELAND-LG&E PARTNERS  
c/o Westmoreland Energy, Inc.  
300 Preston Avenue, Fifth Floor  
Charlottesville, VA 22902  
Attention: President  
Telecopy: (804)980-5225

with a copy to:

LG&E ROANOKE VALLEY L.P.  
c/o LG&E Energy Corp.  
220 West Main Street  
Louisville, Kentucky 40232  
Attention: President  
Telecopy: (502) 627-2934

And To: CREDIT SUISSE, as Agent  
Credit Suisse  
Tower 49  
12 East 49th Street  
New York, NY 10017  
Attention: Project Finance, Telex: 420149

(ii) If to Assignor:

CONSOL OF KENTUCKY INC.

Telecopy:

**Section 7.2. Waivers, Non-Exclusive Remedies.** No failure on the part of the Assignee to exercise, and no delay in exercising, no course of dealing with respect to, any right under

this Assignment shall operate as a waiver thereof; nor shall any single or partial exercise by the Assignee of any right under this Assignment preclude any other or further exercise thereof or the exercise of any other right. The rights of the Assignee under this Assignment are cumulative and are not exclusive of any other remedies provided by law.

**Section 7.3. Expenses; Documentary Taxes.** The Assignor shall forthwith on demand pay all out-of-pocket expenses incurred by the Assignee, including fees and disbursements of its counsel and agents, in connection with the preparation and administration of this Assignment or the preservation, protection or defense of the rights of the Assignee in and to the Lease and the Income. The Assignor shall forthwith pay on demand the amount of any taxes which the Assignee may have been required to pay by reason of this Assignment (including any applicable transfer taxes).

**Section 7.4. Successors and Assigns.** This Assignment is for the benefit of the Assignee and its successors and assigns. This Assignment shall be binding upon the Assignor and its successors and permitted assigns.

**Section 7.5. Amendments and Waivers.** Any provision of this Assignment may be amended or waived, if, but only if, such amendment or waiver is in writing and is signed by the Assignor and the Assignee.

**Section 7.6. Virginia Law.** This Assignment shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, except as otherwise required by mandatory provisions of law and except to the extent that remedies provided by the laws of any jurisdiction other than Virginia are governed by the laws of such jurisdiction.

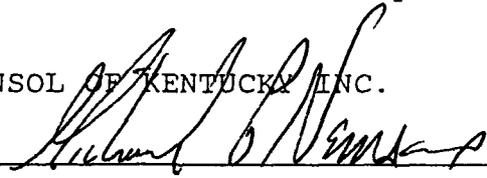
**Section 7.7. Limitation by Law; Severability.** (a) All rights, remedies and powers provided in this Assignment may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Assignment are intended to be subject to all applicable mandatory provisions of law which may be controlling and be limited to the extent necessary so that they will not render this Assignment invalid, unenforceable in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

(b) If any provision hereof is invalid and unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (i) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of the Assignee in order to carry out the intentions of the parties hereto as nearly as may be possible; and (ii) the invalidity or unenforceability of any provision hereof in

any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

**Section 7.8. Counterparts; Effectiveness.** This Assignment may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Assignment shall become effective when the Assignee shall have received counterparts hereof signed by itself and the Assignor.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed as of the day and year first above written.

CONSOL OF KENTUCKY INC.  
By   
Title: Michael F. Nemser  
Vice President & Treasurer  
of CONSOL Inc.  
Attorney In-Fact

WESTMORELAND - LG&E PARTNERS, a Virginia general partnership, by its general partners

WESTMORELAND - ROANOKE VALLEY, L.P., a Delaware limited partnership, a general partner

By: WEI - Roanoke Valley, Inc., a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

LG&E ROANOKE VALLEY, L.P., a California limited partnership, a general partner

By: LG&E Power 16 Incorporated, a California corporation

By: \_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STEP-IN RIGHTS AGREEMENT AND ASSIGNMENT OF LEASE

dated as of December 21, 1994

by

CONSOL OF KENTUCKY INC.

in favor of

WESTMORELAND - LG&E PARTNERS

## STEP-IN RIGHTS AGREEMENT AND ASSIGNMENT OF LEASE

THIS STEP-IN RIGHTS AGREEMENT AND ASSIGNMENT OF LEASE (as amended, supplemented or modified from time to time, this "Assignment") is dated as of December 21, 1994 between CONSOL OF KENTUCKY INC., a Delaware corporation (the "Assignor") and WESTMORELAND - LG&E PARTNERS, a Virginia general partnership (the "Assignee").

A. Assignee and TECO Coal Corporation entered into a Coal Supply Agreement dated as of June 21, 1993 (as the same may be amended, supplemented or modified from time to time, the "ROVA I Contract") with respect to the supply of coal to Assignee's approximately 165 megawatt Roanoke Valley I coal-fired cogeneration project, which grants Assignee step-in rights with respect to the Rail Transportation Agreement (as hereinafter defined) under certain circumstances. Assignee and TECO Coal Corporation entered into a Coal Supply Agreement dated as of October 15, 1993 (as the same may be amended, supplemented or modified from time to time, the "ROVA II Contract") with respect to the supply of coal to Assignee's approximately 44 megawatt Roanoke Valley II coal-fired cogeneration project.

B. Assignor has assumed the obligations of Westmoreland Coal Company ("WCC"), Kentucky Criterion Coal Company ("KCC") and Westmoreland Coal Sales Company ("WCSC") (collectively, the "Westmoreland Parties") under (i) a Rail Transportation Agreement effective as of May 17, 1991, as amended by Amendments Nos. 1, 2 and 3 (as now or hereafter amended, the "Rail Transportation Agreement") for the transportation of coal to the facility which grants Assignee step-in rights under certain circumstances, (ii) a Lease dated as of December 27, 1991, including Supplement No.1 thereto, between WCC and Keycorp Leasing Ltd., a Delaware corporation (the "Lessor"), pursuant to which the Assignor, as assignee of the Westmoreland Parties' obligations, leases 95 railcars from the Lessor, which will be used by Assignor to provide Industry Cars under the Rail Transportation Agreement, and (iii) the Three Party Agreement dated as of June 21, 1993, and the Three Party Agreement (ROVA II), each among the Westmoreland Parties, TECO Coal and Credit Suisse, as Agent under the Credit Agreement defined below, pursuant to which Assignor, as assignee of the Westmoreland Parties' obligations, has agreed to grant to Assignee step-in rights with respect to the Railcars and the Lease for use in connection with the Rail Transportation Agreement, and to assign its right and interest in the Lease to the Assignee.

ARTICLE I  
DEFINITIONS

Section 1.1. Definitions. Terms defined in the ROVA I Contract, the ROVA II Contract, and/or the Credit Agreement, as the case may be, and not otherwise defined herein shall have, as used herein, the respective meanings provided for therein. In addition, the terms as used herein, shall have the following meanings:

"Collateral" shall mean all of Assignor's right, title and interest in the Lease and the Income assigned to Assignee as security pursuant to Section 3.1 hereof.

"KCC Consent" shall mean the Consent and Agreement among Lessor, Hitachi Credit America Corp., Project Owner, TECO Coal and Agent, as amended, supplemented or modified from time to time.

"Credit Agreement" shall mean the Amended and Restated Construction and Term Loan Agreement, dated as of December 1, 1993, among Westmoreland-LG&E Partners, as Borrower, Credit Suisse, National Westminster Bank PLC, the Bank of Nova Scotia and each Purchasing Lender, as Lenders, the Prudential Insurance Company of America and each Purchasing Institutional Lender, as Institutional Lenders, the Prudential Insurance Company of America, as Institutional Agent, Credit Suisse, New York Branch, as the Issuing Bank, Credit Suisse, National Westminster Bank PLC, The Bank of Nova Scotia and the Sumitomo Bank, Limited, New York Branch, as Co-Agents, and Credit Suisse, as Agent.

"Income" shall mean all of the benefits, revenues, security deposits, profits and other sums now or hereafter due, or to which the Assignor may now be or hereafter become entitled, arising from the Leased Railcars, whether or not yet earned by performance.

"Lease" means the Lease dated as of December 27, 1991 between the Assignor and the Lessor, including Supplement No.1 thereto, as such Lease may be amended, supplemented or modified from time to time.

"Leased Railcars" means the 95 railcars leased by Assignor from the Lessor pursuant to the terms and conditions of the Lease.

"Step-In Notice" shall mean, with respect to the ROVA I Contract, a Step-In Notice as defined in Section 23.12 of the ROVA I Contract, and with respect to the ROVA II Contract, a Step-In Notice as defined in Section 23.12 of the ROVA II Contract, copies of which sections are attached hereto as Exhibit A.

ARTICLE II  
STEP-IN RIGHTS

Section 2.1. Step-In Rights. Assignor hereby grants to Assignee, from and after the occurrence of an event described in Section 6.1 hereof, the right and license to exercise all of Assignor's rights under the Lease or with respect to the Railcars and Income (the "Step-in Rights"), including but not limited to the rights set forth in Section 6.4.(a) hereof.

Section 2.2. Cooperation. Assignor shall cooperate with Assignee in connection with the exercise by Assignee of the Step-In Rights, and shall provide such further assurances with respect to such rights as shall be necessary or appropriate in order for Assignee effectively to exercise such rights.

ARTICLE III  
THE ASSIGNMENT

Section 3.1. The Assignment. Assignor hereby grants and assigns to the Assignee, as security for the performance of the "Obligations" (as defined below), all of the Assignor's right, title and interest in the Lease and the Income. This Assignment constitutes an absolute, present and irrevocable assignment and shall be fully operative in accordance with its terms without any further action by the parties hereto.

Section 3.2. Security for Obligations. This Assignment secures the performance of the obligations of Assignor under Section 2.1 hereof (all such obligations being herein referred to as the "Obligations"). This Assignment is granted as security only and shall not subject the Assignee to, or transfer or in any way affect or modify, any obligation or liability of the Assignor with respect to the Lease or any transaction in connection therewith.

Section 3.3. Termination of Assignment. This Assignment shall terminate and all rights in the Lease and Income shall revert to the Assignor upon the 20th anniversary of the Commercial Operations Date under the ROVA II Contract. Upon any such termination of this Assignment, the Assignee will, at the Assignor's expense, execute and deliver to the Assignor such documents as the Assignor shall reasonably request to evidence the termination of this Assignment.

Section 3.4. Security Interest Absolute. All rights of Assignee hereunder, the security interest granted herein and all obligations of Assignor hereunder, shall be absolute and unconditional irrespective of:

(1) any lack of validity or enforceability of this Agreement, the Collateral or any other agreement or instrument relating thereto;

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any amendment or waiver of or any consent to any departure from the Lease or this Agreement; or

(iii) any exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to or departure from any guaranty, for all or any of the Obligations.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES

Section 4.1. Representations. Assignor represents and warrants as follows:

(a) Assignor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is in good standing in all places where necessary in light of the business it conducts and the properties it owns.

(b) Assignor has the necessary corporate power, corporate authority and legal right to execute, deliver and perform the Lease and this Assignment, and the execution and delivery by Assignor of the Lease and this Consent to Assignment and the performance of its respective obligations thereunder and hereunder have been duly authorized by all necessary corporate action and do not and will not (i) require any consent or approval of any shareholder of Assignor except for those approvals which have been duly obtained and are in full force and effect, (ii) violate the corporate charter or by-laws of Assignor or any provision of any law, rule, regulation, or any order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Assignor, (iii) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which Assignor is a party or by which it or its properties may be bound or affected, or (iv) result in, or require, the creation or imposition of any lien, security interest, change or encumbrance upon or with respect to any of the properties now owned or hereafter acquired by Assignor.

(c) This Assignment has been duly executed and delivered and this Assignment and the Lease constitutes a valid and binding obligation of Assignor.

(d) No consent or approval of, or other action by or any notice or filing with, any court or administrative or governmental body (except those previously obtained) is required in connection with the execution and delivery of this Assignment or the performance by Assignor of its respective obligations thereunder or hereunder. Assignor has obtained all permits, licenses, approvals, consents and exemptions with respect to the performance of its obligations under the Lease and this Assignment required by applicable laws, statutes, rules and regulations in effect as of the date hereof.

(e) Assignor is not in default with respect to the Lease and has no knowledge, as of the date of execution hereof, of any claims or rights of set-off by Assignor or by any of its affiliates or parent against Assignor.

(f) There are no proceedings pending or, to best of Assignor's knowledge after due inquiry, threatened against or affecting Assignor in any court or before any governmental authority or arbitration board or tribunal (whether or not purportedly on behalf of Assignor) which may result in a material or adverse effect upon the property, business, prospects, profits or condition (financial or otherwise) of Assignor, or the ability of Assignor to perform its obligations under the Lease or this Assignment; and Assignor is not in default with respect to any order of any court, governmental authority or arbitration board or tribunal.

(g) The grant herein of a security interest in the Collateral creates a legal, valid and perfected first priority security interest in the Collateral, subject, however, to the rights of TECO Coal under the Three Party Agreement.

(h) Assignor shall immediately notify Assignee of any claim against the Collateral adverse to the interest of Assignee or the Secured Parties.

(i) Assignor's chief executive office, principal place of business and the office where Assignor keeps its records regarding the Collateral and the originals of the Assigned Agreements are each located in the Commonwealth of Pennsylvania, at the address set forth in Section 7.1 hereof, and such address is the location of the sole office or place of business maintained by Assignor as of the date hereof. Assignor shall notify Assignee immediately in writing of any change in the location of its chief executive office, principal place of business or the office where such records and originals are kept, or the establishment by Assignor of any other office or place of business, or the adoption or change of its name or any trade name or fictitious business name and, upon written request of Assignee, shall execute any additional documents or certificates necessary to reflect the

adoption of or change in its name or any trade name or fictitious business name.

(j) Assignor agrees that from time to time, at its expense, Assignor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary, or that Assignee may reasonably request, in order to perfect and protect the security interest granted or purported to be granted hereunder in the Collateral or to enable Assignee to exercise and enforce its rights and remedies with respect to the Collateral.

(k) Assignor will keep and maintain at its own cost and expense satisfactory and complete records of the Collateral. Assignor will furnish to Assignee from time to time such reports in connection with the Collateral as Assignee may reasonably request, all in reasonable detail. Subject to Section 6.11 of the Credit Agreement, Assignee and the Secured Parties may inspect the Railcars at any reasonable time and upon reasonable notice, wherever located.

(l) Assignor will not create, incur or permit to exist, will defend the Collateral against, and will take such other action as is necessary to remove, any lien or claim on or to the Collateral, other than the security interest in favor of TECO Coal referred to above, and will defend the right, title and interest of Assignee in and to any of the Collateral against the claims and demands of all persons whomsoever.

#### ARTICLE V COVENANTS

Section 5.1. Filing; Further Assurances. The Assignor will cause this Assignment to be duly filed and recorded and at all times hereafter maintain such filing with the Interstate Commerce Commission in accordance with 49 U.S.C. §10321, 49 U.S.C. §11303 and 5 U.S.C. §559 and pursuant to the filing requirements of 49 C.F.R. §1177.

Section 5.2. Further Assignments or Amendments. The Assignor shall not, without the prior written consent of the Assignee, (i) make any further assignment of its right, title and interest under the Lease or any part thereof except to TECO Coal, or (ii) amend, supplement, renew, surrender or terminate, or permit the amendment, supplementation, renewal, surrender or termination of the Lease.

Section 5.3. Performance of Obligations. The Assignor shall faithfully comply with its obligations under the terms of the Lease and shall keep the Lease in full force and effect.

Section 5.4. Change in Law. The Assignor will promptly notify the Assignee in writing of any change in law known to it (and will use its best efforts to become aware of any such change in law) which (i) adversely affects or will adversely affect this Assignment or (ii) requires or will require a change in the procedures to be followed in order to maintain and protect this Assignment.

Section 5.5. Consent. The Assignor hereby consents to the assignment of Assignee's rights under this Assignment to Credit Suisse, as Agent, pursuant to the Credit Agreement and the Security Documents (as defined therein), and to the exercise of any or all of the Assignee's rights hereunder by the Agent on behalf of the Secured Parties (as defined in the Credit Agreement).

Section 5.6. Acknowledgment of Assignee's Obligations and Rights. Assignee has no obligation hereunder to extend credit to Assignor or any contractor to Assignor at any time for any purpose. Assignee shall have no obligation to Assignor under the Lease or this Assignment until such time as Assignee notifies Assignor in writing of Assignee's election to exercise its rights hereunder. If Assignor defaults in the performance of its covenants under the Lease or hereunder, the Secured Parties under the Credit Agreement may have the right, inter alia, to (a) declare all amounts due to the Secured Parties under the Loan Instruments or any of the Security Documents immediately due and payable, (b) take possession of the Facilities and complete the same, and (c) sell the Facilities and any purchaser at such sale shall succeed to Assignee's rights hereunder; subject to Assignee's compliance with the provisions of the Lease and the terms of this Assignment, Assignor shall cooperate with the Secured Parties in their exercise of such rights.

## ARTICLE VI

### EXERCISE OF STEP-IN RIGHTS; DEFAULT; REMEDIES

Section 6.1. Exercise of Step-In Rights. Assignee shall have the right to exercise the Step-In Rights if any of the following events (the "Step-In Events") occur:

(i) if the ROVA I Contract or ROVA II Contract is in effect, an event entitling Assignee to give a Step-In Notice; or

(ii) if either the ROVA I Contract or ROVA II Contract is not in effect, the occurrence of an Event of Default by Industry under the terms of the Transportation Agreement.

Section 6.2. Events of Default. It shall be an "Event of Default" under this Assignment if any Step-In Event occurs and Assignor fails to permit Assignee to exercise the Step-In Rights or Assignee is otherwise prevented from exercising the Step-In Rights.

Section 6.3. Surrender of Possession or Control. Upon the occurrence of a Step-In Event or an Event of Default, the Assignor shall, upon demand of the Assignee, subject to the terms of the Lease and the KCL Consent, promptly surrender to the Assignee, or its employees or agents, the actual possession and control of any one or all of the Leased Railcars and all other rights or interest under the Lease (the "Assumed Interests"). If the Assignor shall fail, upon demand, to surrender any Assumed Interest, the Assignee may obtain a judgment or decree requiring the Assignor to surrender immediate possession of the same.

Section 6.4. Right to Manage.

(a) Upon taking possession or control of any Assumed Interest pursuant to Section 6.3 of this Assignment, the Assignee may use, manage, operate and control the Assumed Interests pursuant to and in accordance with the Lease, and, in so doing, shall have access to the books, papers and accounts of the Assignor relating to such Assumed Interests and may collect all moneys owed pursuant to such Assumed Interests. In addition, to the extent permitted under the Lease or as otherwise agreed between Assignee and Lessor, the Assignee may (i) maintain and restore the Assumed Interests and make such repairs, additions and improvements thereto and thereon, and purchase or otherwise acquire such additional fixtures, equipment and other property as it may deem necessary to facilitate the operation of business under the Lease; (ii) contest or compromise any claim or encumbrance against the Assumed Interests; (iii) employ such counsel, accountants, contractors and other persons as any of them shall deem necessary to assist it; (iv) perform all acts required of the Assignor with respect to the Assumed Interests, including acts required of it under the Lease; and (v) exercise all of the rights and powers which the Assignor possessed with respect to the Assumed Interests to the same extent as the Assignor could have exercised the same.

(b) For the purpose of carrying out the provisions of Section 6.4(a) of this Assignment, the Assignor hereby irrevocably appoints the Assignee the true and lawful attorney-in-fact for the Assignor and authorizes it to perform any act described in Section 6.4(a) and any and all actions necessary and incidental thereto. This power of attorney is a power coupled with an interest which cannot be revoked.

Section 6.5. Right to Cure Default. If any default shall be threatened or shall occur with respect to the Assignor's

obligations hereunder or under the Lease, the Assignee shall have the right (without any obligation to do so and without awaiting the expiration of any grace period under the Lease) to take such action as the Assignee deems necessary or appropriate to prevent or cure such default, and any amounts expended by the Assignee in preventing curing such defaults, together with interest thereon at the rate set for a default under the Coal Contract, shall be payable on demand and shall be secured by this Assignment.

**Section 6.6. Limitation of Assignee's Liability; Indemnification.** The assignment hereunder of the Lease to the Assignee and, except as expressly set forth in the Consent and Agreement among Lessor, Assignee, TECO Coal and Credit Suisse, any exercise by the Assignee of its remedies provided hereunder is not intended to impose and shall not impose on the Assignee any liability with respect to, and the Assignee shall not be obligated to perform, any of the Assignor's obligations under the Lease. The Assignor shall indemnify, defend and hold the Assignee harmless from and against any liability, claims, damages and costs (including attorneys' fees) arising from the Lease and the Assignor's obligations thereunder.

**Section 6.7. Right to Collect; Application of Sums Collected.** The Assignee shall be entitled, upon exercising its Step-In Rights and an Event of Default and after notice to the Assignor, to collect and retain the Income during any period that Assignee has possession of the Leased Railcars. Any sums collected by the Assignee pursuant to the provisions of this Assignment shall, after deducting therefrom any amount expended pursuant to the provisions of Sections 6.4 or 6.5, be applied first, to the payment of any amounts incurred by Assignee in connection with the Lease, the Railcars or the exercise of its rights hereunder and second, to Assignee, the balance of such proceeds. The Assignee's acceptance of this Assignment, the exercise of its rights hereunder and the application of any amount collected hereunder as set forth above shall not be deemed to cure or waive any Event of Default hereunder, invalidate any action taken pursuant thereto or preclude the Assignee from exercising any other right or remedy it may have been granted under any of the documents in connection with this Assignment.

**Section 6.8. Additional Remedies.** In addition to all other rights and remedies provided for herein or otherwise available to it, Assignor shall be entitled, upon the occurrence of an Event of Default, to exercise in respect of the Collateral, all the rights and remedies of a secured party after default under the Code.

ARTICLE VII  
MISCELLANEOUS

Section 7.1. Notices. Any notice to be given under this Assignment shall be in writing and shall be deemed to have been given (x) when presented personally, (y) when transmitted by telecopy to the numbers specified below, or (z) when received, if deposited in a regularly maintained receptacle for the United States Postal Service, postage prepaid, registered or certified, return receipt requested, addressed as indicated below (or such other address as a party may have specified by written notice delivered in accordance herewith). Transmission by telecopy shall constitute provision of notice under this Agreement only if receipt thereof is acknowledged by the intended recipient thereof:

(i) If to Assignee:

WESTMORELAND-LG&E PARTNERS  
c/o Westmoreland Energy, Inc.  
300 Preston Avenue, Fifth Floor  
Charlottesville, VA 22902  
Attention: President  
Telecopy: (804)980-5225

with a copy to:

LG&E ROANOKE VALLEY L.P.  
c/o LG&E Energy Corp.  
220 West Main Street  
Louisville, Kentucky 40232  
Attention: President  
Telecopy: (502) 627-2934

And To: CREDIT SUISSE, as Agent  
Credit Suisse  
Tower 49  
12 East 49th Street  
New York, NY 10017  
Attention: Project Finance, Telex: 420149

(ii) If to Assignor:

CONSOL OF KENTUCKY INC.

Telecopy:

Section 7.2. Waivers, Non-Exclusive Remedies. No failure on the part of the Assignee to exercise, and no delay in exercising, no course of dealing with respect to, any right under

this Assignment shall operate as a waiver thereof; nor shall any single or partial exercise by the Assignee of any right under this Assignment preclude any other or further exercise thereof or the exercise of any other right. The rights of the Assignee under this Assignment are cumulative and are not exclusive of any other remedies provided by law.

**Section 7.3. Expenses; Documentary Taxes.** The Assignor shall forthwith on demand pay all out-of-pocket expenses incurred by the Assignee, including fees and disbursements of its counsel and agents, in connection with the preparation and administration of this Assignment or the preservation, protection or defense of the rights of the Assignee in and to the Lease and the Income. The Assignor shall forthwith pay on demand the amount of any taxes which the Assignee may have been required to pay by reason of this Assignment (including any applicable transfer taxes).

**Section 7.4. Successors and Assigns.** This Assignment is for the benefit of the Assignee and its successors and assigns. This Assignment shall be binding upon the Assignor and its successors and permitted assigns.

**Section 7.5. Amendments and Waivers.** Any provision of this Assignment may be amended or waived, if, but only if, such amendment or waiver is in writing and is signed by the Assignor and the Assignee.

**Section 7.6. Virginia Law.** This Assignment shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, except as otherwise required by mandatory provisions of law and except to the extent that remedies provided by the laws of any jurisdiction other than Virginia are governed by the laws of such jurisdiction.

**Section 7.7. Limitation by Law; Severability.** (a) All rights, remedies and powers provided in this Assignment may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Assignment are intended to be subject to all applicable mandatory provisions of law which may be controlling and be limited to the extent necessary so that they will not render this Assignment invalid, unenforceable in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

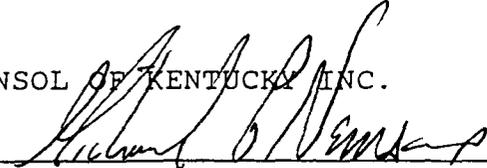
(b) If any provision hereof is invalid and unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (i) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of the Assignee in order to carry out the intentions of the parties hereto as nearly as may be possible; and (ii) the invalidity or unenforceability of any provision hereof in

any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

**Section 7.8. Counterparts; Effectiveness.** This Assignment may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Assignment shall become effective when the Assignee shall have received counterparts hereof signed by itself and the Assignor.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed as of the day and year first above written.

CONSOL OF KENTUCKY INC.

BY 

Title: Michael F. Nemser  
Vice President & Treasurer  
of CONSOL Inc.  
Attorney In-Fact

WESTMORELAND - LG&E PARTNERS, a Virginia general partnership, by its general partners

WESTMORELAND - ROANOKE VALLEY, L.P., a Delaware limited partnership, a general partner

By: WEI - Roanoke Valley, Inc., a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

LG&E ROANOKE VALLEY, L.P., a California limited partnership, a general partner

By: LG&E Power 16 Incorporated, a California corporation

By: \_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

OFFICER'S CERTIFICATE  
CERTIFICATE  
FOR  
CONSOL OF KENTUCKY INC.

This Certificate is being delivered pursuant to the Amended and Restated Construction and Term Loan Agreement (the "Credit Agreement"), dated as of December 1, 1993, among Westmoreland-LG&E Partners, as Borrower, Credit Suisse, National Westminster Bank PLC, The Bank of Nova Scotia and each Purchasing Lender, as Lenders, The Prudential Insurance Company of America and each Purchasing Institutional Lender, as Institutional Lenders, The Prudential Insurance Company of America, as Institutional Agent, Credit Suisse, New York Branch, as the Issuing Bank, Credit Suisse, National Westminster Bank PLC, The Bank of Nova Scotia and the Sumitomo Bank, Limited, New York Branch, as Co-Agents, and Credit Suisse, as Agent.

Capitalized terms used herein and not defined herein have meanings attributed to those terms in the Credit Agreement.

I, , Secretary of Consol Energy Inc., a Delaware corporation, sole shareholder of Consol of Kentucky Inc. (hereinafter called the "Corporation") do hereby certify that:

1. I know of no proceeding for the dissolution or liquidation of the Corporation or threatening its existence and, to the best of my knowledge, the Corporation is a corporation duly organized and validly existing under and by virtue of the laws of the State of Delaware and is in good standing in that State.

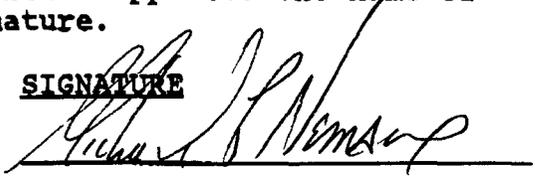
2. Attached hereto as Exhibit 1 is a true, correct and complete copy of the power of attorney designating Michael F. Nemser as the attorney-in-fact for the Corporation. The attached power of attorney has not been in any way amended, annulled, rescinded or revoked and is still in full force and effect.

3. The signature set forth below opposite the name of Michael Nemser is his genuine signature.

NAME AND OFFICE

SIGNATURE

Michael F. Nemser



WITNESS my hand and the seal this 21 day of DECEMBER, 1994.

L. J. Mason  
Secretary

I, JAMES L. HOOVER, ASSISTANT SECRETARY of Consol Energy, Inc. do hereby certify that L. J. MASON, whose signature appears above, has been duly elected, has been duly qualified, and this day is an officer of the Corporation, holding the office of Secretary, and that the signature, as set above, is his genuine signature.

James L. Hoover

Dated: DECEMBER 21, 1994

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DEC 20 '94 18:33 FROM COMMUNICATION/LEGAL

TO 918047751061

PAGE.002/002

JUL 28 '94 08:28PM CONSOL TREASURY

P.3/3

**POWER OF ATTORNEY**

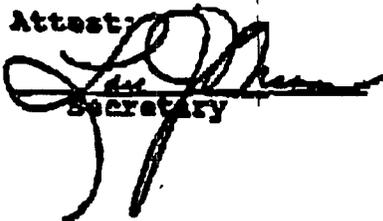
KNOW ALL MEN BY THESE PRESENTS: That the undersigned, CONSOL of Kentucky Inc., a Delaware corporation, of 1800 Washington Road, Pittsburgh, PA 15241, ("Company") does hereby nominate, constitute and appoint, as its true and lawful Attorney in Fact with the Authority specifically set forth herein, Michael P. Nemeser, the Vice President and Treasurer of CONSOL Inc., a Delaware corporation, having its principal offices at 1800 Washington Road, Pittsburgh, PA 15241 ("Attorney").

The Attorney shall have the authority to negotiate, execute, sign and deliver on behalf of the Company and in its stead any and all agreements, contracts, correspondence, permits, bonds, insurance policies, claims, governmental filings, notices and other documents, whether of a similar or dissimilar nature to those listed herein, and any and all supplements, amendments or additions thereto, in connection with the purchase by Company of the assets of Criterion Coal Company, Kentucky Criterion Coal Company and Deane Processing Company, each Delaware corporations, from their ultimate parent, Westmoreland Coal Company, a Delaware corporation.

This Power of Attorney shall remain in effect until terminated by the Company in writing.

In witness whereof, the Company has caused this Power of Attorney to be executed this 18th day of July, 1994.

Attest:



Secretary

CONSOL of Kentucky Inc.,  
a corporation

By   
Grayson Heard  
Its President

JUL 28 '94 19:27

4128214191 PAGE.003

DEC 20 '94 19:14

8047751061

PAGE.05

OFFICER'S CERTIFICATE

CERTIFICATE  
FOR  
CONSOL OF KENTUCKY INC.

This Certificate is being delivered pursuant to the Amended and Restated Construction and Term Loan Agreement (the "Credit Agreement"), dated as of December 1, 1993, among Westmoreland-LG&E Partners, as Borrower, Credit Suisse, National Westminster Bank PLC, The Bank of Nova Scotia and each Purchasing Lender, as Lenders, The Prudential Insurance Company of America and each Purchasing Institutional Lender, as Institutional Lenders, The Prudential Insurance Company of America, as Institutional Agent, Credit Suisse, New York Branch, as the Issuing Bank, Credit Suisse, National Westminster Bank PLC, The Bank of Nova Scotia and the Sumitomo Bank, Limited, New York Branch, as Co-Agents, and Credit Suisse, as Agent.

Capitalized terms used herein and not defined herein have meanings attributed to those terms in the Credit Agreement.

I, , Secretary of Consol Energy Inc., a Delaware corporation, sole shareholder of Consol of Kentucky Inc. (hereinafter called the "Corporation") do hereby certify that:

1. I know of no proceeding for the dissolution or liquidation of the Corporation or threatening its existence and, to the best of my knowledge, the Corporation is a corporation duly organized and validly existing under and by virtue of the laws of the State of Delaware and is in good standing in that State.

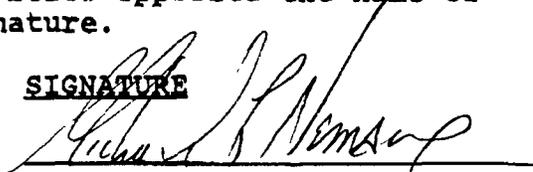
2. Attached hereto as Exhibit 1 is a true, correct and complete copy of the power of attorney designating Michael F. Nemser as the attorney-in-fact for the Corporation. The attached power of attorney has not been in any way amended, annulled, rescinded or revoked and is still in full force and effect.

3. The signature set forth below opposite the name of Michael Nemser is his genuine signature.

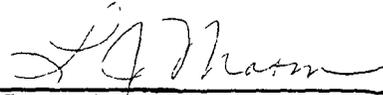
NAME AND OFFICE

Michael F. Nemser

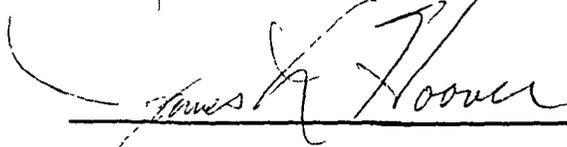
SIGNATURE



WITNESS my hand and the seal this 21 day of  
DECEMBER, 1994.

  
Secretary

I, JAMES L. HOOVER, ASSISTANT SECRETARY of Consol Energy  
Inc. do hereby certify that L. S. MASON, whose signature  
appears above, has been duly elected, has been duly qualified,  
and this day is an officer of the Corporation, holding the office  
of Secretary, and that the signature, as set above, is his  
genuine signature.

  
Dated: DECEMBER 21, 1994

offcor.2

POWER OF ATTORNEY

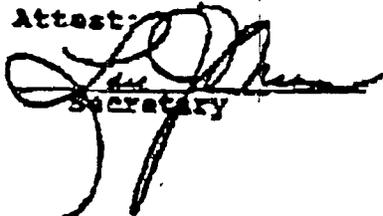
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The Attorney shall have the authority to negotiate, execute, sign and deliver on behalf of the Company and in its stead any and all agreements, contracts, correspondence, permits, bonds, insurance policies, claims, governmental filings, notices and other documents, whether of a similar or dissimilar nature to those listed herein, and any and all supplements, amendments or additions thereto, in connection with the purchase by Company of the assets of Criterion Coal Company, Kentucky Criterion Coal Company and Deane Processing Company, each Delaware corporations, from their ultimate parent, Westmoreland Coal Company, a Delaware corporation.

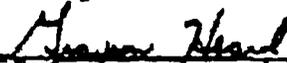
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Attest:

  
Secretary

CONSOL of Kentucky Inc.,  
a corporation

By   
Grayson Heard  
Its President