
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

(Mark One)

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended March 31, 2009

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File No. 001-07775

MASSEY ENERGY COMPANY
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

95-0740960
(I.R.S. Employer Identification Number)

4 North 4th Street, Richmond, Virginia
(Address of principal executive offices)

23219
(Zip Code)

(804) 788-1800
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes ☐ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (check one):

Large accelerated filer ☒

Non-accelerated filer ☐ (Do not check if a smaller reporting company)

Accelerated filer ☐

Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of April 20, 2009, there were 85,482,443 shares of common stock, \$0.625 par value, outstanding.

MASSEY ENERGY COMPANY
FORM 10-Q
For the Quarterly Period Ended March 31, 2009

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PART I: FINANCIAL INFORMATION**Item 1. Financial Statements**

MASSEY ENERGY COMPANY
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(In Thousands, Except Per Share Amounts)
UNAUDITED

	Three Months Ended March 31,	
	2009	2008
Revenues		
Produced coal revenue	\$ 681,027	\$ 543,231
Freight and handling revenue	57,782	65,042
Purchased coal revenue	9,940	10,674
Other revenue	19,339	25,678
Total revenues	<u>768,088</u>	<u>644,625</u>
Costs and expenses		
Cost of produced coal revenue	545,925	418,227
Freight and handling costs	57,782	65,042
Cost of purchased coal revenue	5,206	9,864
Depreciation, depletion and amortization, applicable to:		
Cost of produced coal revenue	71,618	59,348
Selling, general and administrative	1,021	904
Selling, general and administrative	21,870	21,479
Other expense	783	786
Gain on derivative instruments	(8,867)	-
Total costs and expenses	<u>695,338</u>	<u>575,650</u>
Income before interest and taxes	72,750	68,975
Interest income	8,877	5,221
Interest expense	<u>(25,236)</u>	<u>(20,957)</u>
Income before taxes	56,391	53,239
Income tax expense	<u>(12,965)</u>	<u>(11,305)</u>
Net income	<u>\$ 43,426</u>	<u>\$ 41,934</u>
Net income per share		
Basic	<u>\$ 0.51</u>	<u>\$ 0.53</u>
Diluted	<u>\$ 0.51</u>	<u>\$ 0.52</u>
Shares used to calculate income per share		
Basic	<u>84,859</u>	<u>79,768</u>
Diluted	<u>85,182</u>	<u>80,597</u>
Dividends per share	<u>\$ 0.06</u>	<u>\$ 0.05</u>

See Notes to Condensed Consolidated Financial Statements

MASSEY ENERGY COMPANY
CONDENSED CONSOLIDATED BALANCE SHEETS
(In Thousands, Except Per Share Amounts)
UNAUDITED

	March 31, 2009	As Adjusted December 31, 2008
ASSETS		
Current Assets		
Cash and cash equivalents	\$ 566,717	\$ 606,997
Short-term investment	24,913	39,383
Trade and other accounts receivable, less allowance of \$868 and \$873, respectively	295,213	233,266
Inventories	256,061	233,168
Income taxes receivable	-	6,621
Other current assets	104,904	116,061
Total current assets	<u>1,247,808</u>	<u>1,235,496</u>
Net Property, Plant and Equipment	2,326,653	2,297,696
Other Noncurrent Assets	127,948	139,186
Total assets	<u><u>\$ 3,702,409</u></u>	<u><u>\$ 3,672,378</u></u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current Liabilities		
Accounts payable, principally trade and bank overdrafts	\$ 202,245	\$ 244,201
Short-term debt	2,048	1,976
Payroll and employee benefits	55,633	56,959
Income taxes payable	3,214	-
Other current liabilities	207,367	201,017
Total current liabilities	<u>470,507</u>	<u>504,153</u>
Noncurrent Liabilities		
Long-term debt	1,314,351	1,310,181
Deferred income taxes	181,095	177,294
Pension obligation	65,498	63,304
Other noncurrent liabilities	499,767	490,834
Total noncurrent liabilities	<u>2,060,711</u>	<u>2,041,613</u>
Total liabilities	<u>2,531,218</u>	<u>2,545,766</u>
Shareholders' Equity		
Capital stock		
Preferred – authorized 20,000,000 shares without par value; none issued	-	-
Common – authorized 150,000,000 shares of \$0.625 par value; issued 85,484,539 and 85,447,970 shares, respectively	53,410	53,378
Additional capital	546,519	542,519
Retained earnings	670,411	632,077
Accumulated other comprehensive loss	(99,149)	(101,362)
Total shareholders' equity	<u>1,171,191</u>	<u>1,126,612</u>
Total liabilities and shareholders' equity	<u><u>\$ 3,702,409</u></u>	<u><u>\$ 3,672,378</u></u>

See Notes to Condensed Consolidated Financial Statements

MASSEY ENERGY COMPANY
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In Thousands)
UNAUDITED

	Three Months Ended March 31,	
	2009	2008
CASH FLOWS FROM OPERATING ACTIVITIES		
Net income	\$ 43,426	\$ 41,934
Adjustments to reconcile Net income to Cash provided by operating activities:		
Depreciation, depletion and amortization	72,639	60,252
Share-based compensation expense	3,290	2,844
Amortization of bond discount	4,713	156
Deferred income taxes	3,129	6,309
(Gain) loss on disposal of assets	(9,318)	641
Gain on reserve exchange	-	(13,559)
Net change in fair value of derivative instruments	(20,688)	-
Asset retirement obligations accretion	3,502	2,976
Changes in operating assets and liabilities:		
Increase in accounts receivable	(61,086)	(42,377)
Increase in inventories	(22,893)	(6,333)
Decrease in other current assets	11,157	9,336
Decrease (increase) in other assets	11,238	(307)
(Decrease) increase in accounts payable and bank overdrafts	(41,956)	16,423
Increase in accrued income taxes	9,835	15,983
Increase in other accrued liabilities	25,395	39,964
Increase in other noncurrent liabilities	3,007	4,337
Increase in pension obligation	6,442	187
Asset retirement obligations payments	(950)	(1,335)
Cash provided by operating activities	<u>40,882</u>	<u>137,431</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Capital expenditures	(103,704)	(123,547)
Proceeds from redemption of Short-term investment	14,470	-
Proceeds from sale of assets	13,635	1,357
Cash utilized by investing activities	<u>(75,599)</u>	<u>(122,190)</u>
CASH FLOWS FROM FINANCING ACTIVITIES		
Repayments of capital lease obligations	(471)	(452)
Cash dividends paid	(5,092)	(3,971)
Proceeds from stock options exercised	-	11,866
Income tax benefit from stock option exercises	-	3,143
Cash (utilized) provided by financing activities	<u>(5,563)</u>	<u>10,586</u>
(Decrease) increase in Cash and cash equivalents	(40,280)	25,827
Cash and cash equivalents at beginning of period	<u>606,997</u>	<u>365,220</u>
Cash and cash equivalents at end of period	<u>\$ 566,717</u>	<u>\$ 391,047</u>

See Notes to Condensed Consolidated Financial Statements

(1) Significant Accounting Policies

Basis of Presentation

The condensed consolidated financial statements do not include footnotes and certain financial information normally presented annually under accounting principles generally accepted in the United States and, therefore, should be read in conjunction with the Annual Report on Form 10-K of Massey Energy Company (“we,” “our,” “us”) for the year ended December 31, 2008. Accounting measurements at interim dates inherently involve greater reliance on estimates than at year-end. The results of operations for the quarterly period ended March 31, 2009 are not necessarily indicative of results that can be expected for the fiscal year ending December 31, 2009.

The condensed consolidated financial statements included herein are unaudited; however, the financial statements contain all adjustments (consisting of normal recurring accruals), which, in our opinion, are necessary to present fairly our consolidated financial position at March 31, 2009, our consolidated results of operations and cash flows for the three months ended March 31, 2009 and 2008, in conformity with accounting principles generally accepted in the United States (“GAAP”).

The condensed consolidated financial statements include our accounts and the accounts of our wholly owned and sole, direct operating subsidiary, A.T. Massey Coal Company, Inc. (“A.T. Massey”), and A.T. Massey’s wholly and majority owned direct and indirect subsidiaries. Significant intercompany transactions and accounts are eliminated in consolidation. We have no independent assets or operations. We do not have a controlling interest in any separate independent operations. Investments in business entities in which we do not have control, but have the ability to exercise significant influence over the operating and financial policies, are accounted for under the equity method.

A.T. Massey fully and unconditionally guarantees our obligations under the 6.625% senior notes due 2010 (“6.625% Notes”), the 6.875% senior notes due 2013 (“6.875% Notes”), the 3.25% convertible senior notes due 2015 (“3.25% Notes”), the 4.75% convertible senior notes due 2023 (“4.75% Notes”) and the 2.25% convertible senior notes due 2024 (“2.25% Notes”). In addition, the 6.625% Notes, the 6.875% Notes, the 3.25% Notes and the 2.25% Notes are fully and unconditionally, jointly and severally guaranteed by A.T. Massey and substantially all of our indirect operating subsidiaries, each such subsidiary being indirectly 100% owned by us. The subsidiaries not providing a guarantee of the 6.625% Notes, the 6.875% Notes, the 3.25% Notes and the 2.25% Notes are minor (as defined under Securities and Exchange Commission (“SEC”) Rule 3-10(h)(6) of Regulation S-X). See Note 5 to the Notes to Condensed Consolidated Financial Statements for a more complete discussion of debt.

Fair Value Measurements

In September 2006, the Financial Accounting Standards Board (“FASB”) issued Statement of Financial Accounting Standards (“SFAS”) No. 157, “Fair Value Measurements” (“SFAS 157”). In February 2008, the FASB issued FASB Staff Position 157-2, Partial Deferral of the Effective Date of SFAS 157, which delayed the effective date of SFAS 157 for all nonrecurring fair value measurements of non-financial assets and non-financial liabilities. We adopted SFAS 157 effective January 1, 2008, for financial assets and financial liabilities. The adoption of SFAS 157 for financial assets and financial liabilities did not have a material impact on our financial position or results of operations. We adopted SFAS 157 effective January 1, 2009, for non-financial assets and non-financial liabilities. The adoption of SFAS 157 for non-financial assets and non-financial liabilities did not have a material impact on our financial position or results of operations. See Note 12 to the Notes to Condensed Consolidated Financial Statements for more information on SFAS 157.

In October 2008, the FASB issued Staff Position No. FAS 157-3, “Determining the Fair Value of a Financial Asset When the Market for That Asset is Not Active” (“FSP 157-3”). FSP 157-3 clarifies the application of SFAS 157 for financial assets and financial liabilities in cases where a market is not active. We determined the guidance provided by FSP 157-3 in its estimation of fair values as of March 31, 2009 did not have an effect on our results of operations or financial position.

Derivative Instruments

Our coal sales and coal purchase forward contracts' derivative positions are offset on a counterparty-by-counterparty basis for derivative instruments executed with the same counterparty under a master netting arrangement, in accordance with FSP Interpretation No. 39-1.

In March 2008, the FASB issued SFAS No. 161, "Disclosures about Derivative Instruments and Hedging Activities—an amendment of FASB Statement No. 133" ("SFAS 161") which is effective for fiscal years beginning after November 15, 2008. SFAS 161 amends the disclosure requirements of SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities" to provide an enhanced understanding of how and why derivative instruments are used, how they are accounted for and their effect on an entity's financial condition, performance and cash flows. We adopted SFAS 161 effective January 1, 2009. See Note 11 to the Notes to Condensed Consolidated Financial Statements for disclosure in accordance with SFAS 161.

Convertible Debt Securities

In May 2008, the FASB issued FASB Staff Position APB 14-1 ("FSP APB 14-1"), "Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)," which applies to all convertible debt instruments that have a "net settlement feature," which means that such convertible debt instruments, by their terms, may be settled either wholly or partially in cash upon conversion. FSP APB 14-1 requires issuers of convertible debt instruments that may be settled wholly or partially in cash upon conversion to separately account for the liability and equity components in a manner reflective of the issuers' nonconvertible debt borrowing rate. FSP APB 14-1 requires that an entity determine the estimated fair value of a similar debt instrument as of the date of the issuance without the conversion feature but inclusive of any other embedded features and assign that value to the debt component of the instrument, which resulted in a discount being recorded. The debt is subsequently being accreted through interest expense to its par value over its expected life using the market rate at the date of issuance. The residual value between the initial proceeds and the value allocated to the debt is reflected in equity as additional paid in capital. FSP APB 14-1 is applicable to our 3.25% Notes. We adopted FSP APB 14-1 effective January 1, 2009. See Note 5 to the Notes to Condensed Consolidated Financial Statements for more information on FSP APB 14-1.

The adoption of FSP APB 14-1 impacted the historical accounting for the 3.25% Notes, which resulted in the adjustment of our Consolidated Balance Sheets as of December 31, 2008, as follows:

	As Originally Presented December 31, 2008	As Adjusted December 31, 2008
	(In Thousands)	(In Thousands)
Other Noncurrent Assets	\$ 142,644	\$ 139,186
Total assets	3,675,836	3,672,378
Long-term debt	1,463,643	1,310,181
Deferred taxes	117,268	177,294
Total noncurrent liabilities	2,135,049	2,041,613
Total liabilities	2,639,202	2,545,766
Additional capital	444,122	542,519
Retained earnings	640,496	632,077
Total shareholders' equity	1,036,634	1,126,612
Total liabilities and shareholders' equity	3,675,836	3,672,378

As the 3.25% Notes were issued during the third quarter of 2008, the adoption of FSP APB 14-1 did not impact our Condensed Consolidated Statements of Income for the three months ended March 31, 2008.

(2) Inventories

Inventories consisted of the following:

	March 31, 2009	December 31, 2008
	(In Thousands)	
Saleable coal	\$ 161,248	\$ 144,834
Raw coal	24,500	16,802
Coal inventory	185,748	161,636
Supplies inventory	70,313	71,532
Total inventory	<u>\$ 256,061</u>	<u>\$ 233,168</u>

Saleable coal represents coal ready for sale, including inventories designated for customer facilities under consignment arrangements of \$30.0 million and \$50.7 million at March 31, 2009 and December 31, 2008, respectively. Raw coal represents coal that generally requires further processing prior to shipment to the customer.

(3) Other Current Assets

Other current assets are comprised of the following:

	March 31, 2009	December 31, 2008
	(In Thousands)	
Longwall panel costs	\$ 14,898	\$ 12,290
Deposits	59,829	59,648
Other	30,177	44,123
Total other current assets	<u>\$ 104,904</u>	<u>\$ 116,061</u>

Deposits consist primarily of funds placed in restricted accounts with financial institutions to collateralize letters of credit that support workers' compensation requirements, insurance and other obligations. As of March 31, 2009 and December 31, 2008, Deposits includes \$46.0 million of funds pledged as collateral to support \$45.0 million of outstanding letters of credit. In addition, Deposits at March 31, 2009 and December 31, 2008 includes \$13.0 million of United States Treasury securities supporting various regulatory obligations.

(4) Property, Plant and Equipment

Property, plant and equipment is comprised of the following:

	March 31, 2009	December 31, 2008
	(In Thousands)	
Property, plant and equipment, at cost	\$ 4,455,953	\$ 4,373,325
Accumulated depreciation, depletion and amortization	(2,129,300)	(2,075,629)
Net property, plant and equipment	<u>\$ 2,326,653</u>	<u>\$ 2,297,696</u>

Property, plant and equipment includes gross assets under capital leases of \$17.3 million at March 31, 2009 and December 31, 2008.

During the first quarter of 2009, we sold our interest in certain coal reserves to a third party, recognizing a pre-tax gain of \$7.1 million in Other revenue.

During the first quarter of 2008, we exchanged coal reserves with a third party, recognizing a gain of \$13.6 million (pre-tax) in Other revenue in accordance with SFAS No. 153, "Exchanges of Nonmonetary Assets, an Amendment of APB No. 29, Accounting for Nonmonetary Transactions" ("SFAS 153"). The acquired coal reserves were recorded in Property, plant and equipment at the fair value of the reserves surrendered.

(5) Debt

Debt is comprised of the following:

	March 31, 2009	As Adjusted December 31, 2008
	(In Thousands)	
6.875% senior notes due 2013, net of discount of \$3,792 and \$3,959, respectively	\$ 756,208	\$ 756,041
3.25% convertible senior notes due 2015, net of discount of \$148,916 and \$153,462, respectively	522,084	517,538
6.625% senior notes due 2010	21,949	21,949
2.25% convertible senior notes due 2024	9,647	9,647
4.75% convertible senior notes due 2023	70	70
Capital lease obligations	6,441	6,912
Total debt	1,316,399	1,312,157
Amounts due within one year	(2,048)	(1,976)
Total long-term debt	<u>\$ 1,314,351</u>	<u>\$ 1,310,181</u>

The weighted average effective interest rate of the outstanding borrowings was 7.3% both at March 31, 2009 and December 31, 2008.

Convertible Debt Securities

In May 2008, the FASB issued FSP APB 14-1 (as discussed in Note 1) which is applicable to our 3.25% Notes. We adopted FSP APB 14-1 as of January 1, 2009, which resulted in increased Interest expense of \$4.5 million pre-tax for the three months ended March 31, 2009. The impact to Earnings per share was a decrease of \$0.03 for the quarter ended March 31, 2009. FSP APB 14-1 requires us to separately account for the liability and equity components in a manner reflective of the issuers' nonconvertible debt borrowing rate, which was determined to be 7.75% at the date of issuance.

(6) Pension Expense

Net periodic pension expense for both our qualified defined benefit pension plan and nonqualified supplemental benefit pension plan is comprised of the following components:

	Three Months Ended March 31,	
	2009	2008
	(In Thousands)	
Service cost	\$ 2,382	\$ 2,116
Interest cost	4,172	3,999
Expected return on plan assets	(4,026)	(5,713)
Recognized loss	4,238	254
Amortization of prior service cost	10	10
Net periodic pension expense	<u>\$ 6,776</u>	<u>\$ 666</u>

For the three months ended March 31, 2009 and 2008, we did not contribute to the qualified defined benefit pension plan. We paid benefits to participants of the nonqualified supplemental benefit pension plan of \$0.02 million for both the three month periods ended March 31, 2009 and 2008. We expect that contributions will be required in 2009 for the qualified defined benefit pension plan, estimated to be \$7.5 million, of which \$2.5 million was contributed during April 2009.

The increase in our 2009 pension cost related to our qualified defined benefit pension plan was due to investment losses on our pension assets incurred during 2008.

(7) Other Noncurrent Liabilities

Other noncurrent liabilities is comprised of the following:

	March 31, 2009	December 31, 2008
	(In Thousands)	
Reclamation	\$ 161,985	\$ 154,823
Workers' compensation and black lung	92,132	92,982
Other postretirement benefits	163,330	161,527
Other	82,320	81,502
Total other noncurrent liabilities	<u>\$ 499,767</u>	<u>\$ 490,834</u>

(8) Black Lung and Workers' Compensation Expense

Expenses for black lung benefits and workers' compensation related benefits include the following components:

	Three Months Ended March 31,	
	2009	2008
	(In Thousands)	
Self-insured black lung benefits:		
Service cost	\$ 700	\$ 600
Interest cost	750	850
Amortization of actuarial gain	(1,025)	(875)
Subtotal black lung benefits expense	425	575
Other workers' compensation benefits	9,369	9,131
Total black lung and workers' compensation benefits expense	<u>\$ 9,794</u>	<u>\$ 9,706</u>

Payments for benefits, premiums and other costs related to black lung and workers' compensation liabilities were \$11.9 million and \$6.5 million for the three months ended March 31, 2009 and 2008, respectively.

(9) Other Postretirement Benefits Expense

Net periodic postretirement benefit cost includes the following components:

	Three Months Ended March 31,	
	2009	2008
	(In Thousands)	
Service cost	\$ 1,037	\$ 825
Interest cost	2,518	2,350
Recognized loss	586	325
Amortization of prior service credit	(188)	(188)
Net periodic postretirement benefit cost	<u>\$ 3,953</u>	<u>\$ 3,312</u>

Payments for benefits related to postretirement benefit cost were \$1.6 million and \$1.4 million for the three months ended March 31, 2009 and 2008, respectively.

(10) Earnings Per Share

The number of shares of our common stock, \$0.625 par value per share (“Common Stock”) used to calculate basic earnings per share for the three months ended March 31, 2009 and 2008 is based on the weighted average of outstanding shares of Common Stock during the respective periods. The number of shares of Common Stock used to calculate diluted earnings per share is based on the number of shares of Common Stock used to calculate basic earnings per share plus the dilutive effect of stock options and other stock-based instruments held by our employees and directors during each period and debt securities currently convertible into shares of Common Stock during each period. The effect of dilutive securities issuances in the amount of 3.0 million shares of Common Stock for the three months ended March 31, 2009, and 0.5 million shares of Common Stock for the three ended March 31, 2008, were excluded from the calculation of diluted income per share of Common Stock, as such inclusion would result in antidilution.

The computations for basic and diluted income per share are based on the following per share information:

	Three Months Ended March 31,	
	2009	2008
	(In Thousands, Except Per Share Amounts)	
Numerator:		
Net income - numerator for basic	\$ 43,426	\$ 41,934
Effect of convertible notes	44	50
Adjusted net income - numerator for diluted	<u>\$ 43,470</u>	<u>\$ 41,984</u>
Denominator:		
Weighted average shares - denominator for basic	84,859	79,768
Effect of stock options/restricted stock	32	505
Effect of convertible notes	291	324
Adjusted weighted average shares - denominator for diluted	<u>85,182</u>	<u>80,597</u>
Net income per share:		
Basic	<u>\$ 0.51</u>	<u>\$ 0.53</u>
Diluted	<u>\$ 0.51</u>	<u>\$ 0.52</u>

The 4.75% Notes are convertible by holders into shares of Common Stock during certain periods under certain circumstances. The 4.75% Notes were not eligible for conversion at March 31, 2009. If all of the 4.75% Notes outstanding at March 31, 2009 had been eligible for conversion and were converted, we would have issued 3,610 shares of Common Stock.

The 2.25% Notes are convertible by holders into shares of Common Stock during certain periods under certain circumstances. The 2.25% Notes were not eligible for conversion at March 31, 2009. If all of the 2.25% Notes outstanding at March 31, 2009 had been eligible for conversion and were converted, we would have issued 287,113 shares of Common Stock.

The 3.25% Notes are convertible under certain circumstances and during certain periods into (i) cash, up to the aggregate principal amount of the 3.25% Notes subject to conversion and (ii) cash, Common Stock or a combination thereof, at our election in respect to the remainder (if any) of our conversion obligation. As of March 31, 2009, the price per share of Common Stock had not reached the specified threshold for conversion.

(11) Derivative Instruments

We evaluate each of our coal sales and coal purchase forward contracts under SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities" ("SFAS 133") to determine if they qualify for the normal purchase normal sale ("NPNS") exception prescribed by SFAS 133. The majority of our forward contracts do qualify for the NPNS exception based on management's intent and ability to physically deliver or take physical delivery of the coal and therefore are not reflected in the Condensed Consolidated Balance Sheets and Condensed Consolidated Statements of Income. For those contracts that do not qualify for the NPNS exception, the contracts are required to be accounted for as derivative instruments in accordance with SFAS 133, which requires all derivative instruments to be recognized as assets or liabilities and to be measured at fair value. We use purchase coal contracts to supplement our produced and processed coal in order to provide coal to meet customer requirements under sales contracts. Those contracts that have been identified as derivatives have not been designated as cash flow or fair value hedges and, accordingly, the net change in fair value is recorded in current period earnings. As of March 31, 2009, there were approximately 1.6 million and 2.6 million tons outstanding under these coal purchase and coal sales contracts, respectively. We have recorded net gains of \$8.9 million (\$20.7 million of unrealized gains due to fair value measurement adjustments and \$11.8 million of realized losses due to settlements on existing contracts) related to coal sales and purchase contracts that qualify as derivatives in the Condensed Consolidated Statements of Income for the three months ending March 31, 2009 under the caption Gain on derivative instruments. A liability of \$1.9 million is included in Other current liabilities in the Condensed Consolidated Balance Sheets as of March 31, 2009 (all of these contracts have terms of one year or less). The fair values of our purchases and sales derivative contracts have been aggregated in Other current liabilities.

We are exposed to certain risks related to coal price volatility. The forward purchases and sales contracts we enter into and deem derivatives allow us to mitigate a portion of the underlying risk associated with coal price volatility.

(12) Fair Value of Financial Instruments

On January 1, 2008, we adopted SFAS 157, which requires the categorization of financial assets and liabilities based upon the level of judgments associated with the inputs used to measure their fair value. Hierarchical levels – defined by SFAS 157 and directly related to the amount of subjectivity associated with the inputs used to determine the fair value of financial assets and liabilities – are as follows:

- Level 1 – Inputs are unadjusted, quoted prices in active markets for identical assets or liabilities at the measurement date.
- Level 2 – Inputs (other than quoted prices included in Level 1) are either directly or indirectly observable for the assets or liability through correlation with market data at the measurement date and for the duration of the instrument's anticipated life.
- Level 3 – Inputs reflect management's best estimate of what market participants would use in pricing the asset or liability at the measurement date. Consideration is given to the risk inherent in the valuation technique and the risk inherent in the inputs to the model.

Each major category of financial assets and liabilities measured at fair value on a recurring basis are categorized in the tables below based upon the lowest level of significant input to the valuations.

	March 31, 2009			
	(In Thousands)			
	Level 1	Level 2	Level 3	Total
Fixed income securities	\$ 13,039	\$ -	\$ -	\$ 13,039
Money market funds	584,022	-	-	584,022
Short-term investment	-	-	24,913	24,913
Derivative instruments	-	1,864	-	1,864
Total securities	<u>\$ 597,061</u>	<u>\$ 1,864</u>	<u>\$ 24,913</u>	<u>\$ 623,838</u>

All investments in money market funds are cash equivalents or deposits pledged as collateral and are primarily invested in seven money market funds and four Treasury-backed funds. All fixed income securities are deposits, consisting of obligations of the U.S. Treasury, supporting various regulatory obligations. See Note 3 to the Notes to Condensed Consolidated Financial Statements for more information on deposits.



Short-Term Investment

Short-term investment is comprised of an investment in The Reserve Primary Fund (“Primary Fund”), a money market fund that has suspended redemptions and is being liquidated. We have determined that our investment in the Primary Fund no longer meets the definition of a security within the scope of SFAS 115 “Accounting for Certain Investments In Debt and Equity Securities” (“SFAS 115”), since the equity investment no longer has a readily determinable fair value. Therefore, the investment has been classified as a short-term investment, subject to the cost method of accounting, on our Condensed Consolidated Balance Sheet. This classification as a short-term investment is based on our assessment of each of the individual securities that make up the underlying portfolio holdings in the Primary Fund, which primarily consisted of commercial paper and discount notes having maturity dates within the next 12 months, and the stated notifications from the Primary Fund that they expect to liquidate substantially all of their holdings and make distributions within a year.

Assets Measured at Fair Value on a Recurring Basis Using Significant Unobservable Inputs (Level 3):

(In Thousands)	Short-term Investments
Balance at December 31, 2008	\$ 39,383
Transfers in (out) of Level 3, net	(14,470)
Change in fair value included in earnings	-
Balance at March 31, 2009	<u>\$ 24,913</u>
Losses included in earnings attributable to the change in unrealized losses relating to assets still held at March 31, 2009	<u>\$ -</u>

We received a distribution from the Primary Fund in the first quarter of 2009 of \$14.5 million, leaving an investment balance of \$24.9 million, net of an estimated \$6.5 million loss recorded in 2008. Additionally, on April 17, 2009, we received another distribution of \$9.8 million, leaving \$15.1 million as the remaining investment balance. While we expect to receive substantially all of our remaining \$15.1 million in the Primary Fund during 2009, we cannot predict when this will occur or the actual amount we will eventually receive.

Derivative Instruments

Certain of our coal sales and coal purchase forward contracts are accounted for as derivative instruments in accordance with SFAS 133. SFAS 133 requires all derivative instruments to be recognized as assets or liabilities and to be measured at fair value. To establish fair values for these contracts, we use bid/ask price quotations obtained from independent third-party brokers. We could experience difficulty in valuing our derivative instruments if the number of third-party brokers should decrease or market liquidity is reduced. See Note 11 to the Notes to Condensed Consolidated Financial Statements for more information on SFAS 133.

(13) Contingencies

Harman

In December 1997, A.T. Massey’s then subsidiary, Wellmore Coal Corporation (“Wellmore”), declared force majeure under its coal supply agreement with Harman Mining Corporation (“Harman”) and reduced the amount of coal to be purchased from Harman. On October 29, 1998, Harman and its sole shareholder sued A.T. Massey and five of its other subsidiaries (the “Massey Defendants”) in the Circuit Court of Boone County, West Virginia, alleging that the Massey Defendants tortiously interfered with Wellmore’s agreement with Harman, causing Harman to go out of business. On August 1, 2002, the jury awarded the plaintiffs \$50 million in compensatory and punitive damages. On October 24, 2006, the Massey Defendants timely filed their Petition for Appeal to the Supreme Court of Appeals of West Virginia (“WV Supreme Court”). On November 21, 2007, the WV Supreme Court issued a 3-2 majority opinion reversing the judgment against the Massey Defendants and remanding the case to the Circuit Court of Boone County with directions to enter an order dismissing the case, with prejudice, in its entirety. The Harman plaintiffs filed motions asking the WV Supreme Court to conduct a rehearing in the case. On January 24, 2008, the WV Supreme Court decided to rehear the case, which was re-argued on March 12, 2008. On April 3, 2008, the WV Supreme Court again reversed the judgment against the Massey Defendants and remanded the case with direction to enter an order dismissing the case, with prejudice, in its

entirety. In July 2008, the Harman plaintiffs petitioned the United States Supreme Court (the “U.S. Supreme Court”) to review the WV Supreme Court’s dismissal of their claims.

In December 2008, the U.S. Supreme Court agreed to review the case. The U.S. Supreme Court granted review based on the question of whether a justice of the WV Supreme Court should have recused himself from the appeal. Oral argument before the U.S. Supreme Court took place on March 3, 2009. The U.S. Supreme Court could affirm the dismissal of the case by the WV Supreme Court or direct the WV Supreme Court to rehear the case. If the WV Supreme Court, which is comprised of five justices, is directed by the U.S. Supreme Court to rehear the case, the matter would not be heard by all of the same five justices who heard the matter in April 2008. The justices of the reconfigured WV Supreme Court could dismiss the plaintiffs' claims again, or reach some different result, including a reinstatement of the original verdict against us with interest. We believe the range of possible loss in this matter is from zero to \$83.4 million as of March 31, 2009, including post-judgment interest and other costs. We are unable to predict the ultimate outcome of this matter and believe there is no amount in the range that is a better estimate than any other amount given the various possible outcomes. As there is no amount in the range that is a better estimate than any other amount and the minimum amount in the range is zero, we have not recorded an accrual for this matter. It is reasonably possible that our judgments regarding these matters could change in the near term, resulting in the recording of material losses that would affect our operating results and financial position.

West Virginia Flooding

Since July 2001, we and nine of our subsidiaries have been sued in 17 consolidated civil actions filed in the Circuit Courts of Boone, Fayette, Kanawha, McDowell, Mercer, Raleigh and Wyoming Counties, West Virginia, for alleged property damages and personal injuries arising out of flooding on or about July 8, 2001. Along with 32 other consolidated cases not involving us or our subsidiaries, these cases cover approximately 1,800 plaintiffs seeking unquantified compensatory and punitive damages against approximately 100 defendants. The WV Supreme Court transferred all 49 cases (the "Referred Cases") to the Circuit Court of Raleigh County, West Virginia, to be handled by a mass litigation panel, which originally assigned three of its six judges to preside (the "Panel") over the litigation. We believe we have insurance coverage applicable to these items.

Since August 2004, five of our subsidiaries have been sued in six civil actions filed in the Circuit Courts of Boone, McDowell, Mingo, Raleigh, Summers and Wyoming Counties, West Virginia, for alleged property damages and personal injuries arising out of flooding on or about May 2, 2002. These complaints cover approximately 350 plaintiffs seeking unquantified compensatory and punitive damages from approximately 35 defendants.

Since May 2006, we and twelve of our subsidiaries have been sued in three civil actions filed in the Circuit Courts of Logan and Mingo Counties, West Virginia, for alleged property damages and personal injuries arising out of flooding between May 30 and June 4, 2004. Four of our subsidiaries have been dismissed from one of the Logan County cases. These complaints cover approximately 425 plaintiffs seeking unquantified compensatory and punitive damages from approximately 52 defendants.

We believe these matters will be resolved without a material adverse impact on our cash flows, results of operations or financial condition.

West Virginia Trucking

Since January 2003, an advocacy group and residents in Boone, Kanawha, Mingo and Raleigh Counties, West Virginia, filed 17 suits in the Circuit Courts of Kanawha and Mingo Counties, West Virginia, against twelve of our subsidiaries. Plaintiffs alleged that defendants illegally transported coal in overloaded trucks, causing damage to state roads, thereby interfering with plaintiffs' use and enjoyment of their properties and their right to use the public roads. Plaintiffs seek injunctive relief and compensatory and punitive damages. The WV Supreme Court referred the consolidated lawsuits, and similar lawsuits against other coal and transportation companies not involving our subsidiaries, to the Circuit Court of Lincoln County, West Virginia, to be handled by a mass litigation panel judge. Plaintiffs filed motions requesting class certification. On June 7, 2007, plaintiffs voluntarily dismissed their public nuisance claims seeking monetary damages for road and bridge repairs. Defendants filed a motion requesting that the mass litigation panel judge recommend to the WV Supreme Court that the cases be sent back to the circuit courts of origin for resolution. That motion has not been ruled upon. Defendants moved to dismiss any remaining public nuisance claims and to limit any damages for nuisance to two years prior to the filing of any suit, and plaintiffs agreed to an order limiting any damages for nuisance to two years prior to the filing of any suit. The motion to dismiss any remaining public nuisance claims was resisted by plaintiffs and argued at hearings on December 14, 2007 and June 25, 2008. As of May 6, 2009, no date has been set for trial. We believe we have insurance coverage applicable to these items and that they will be resolved without a material adverse impact on our cash flows, results of operations or financial condition.

Well Water Suits

Since September 2004, approximately 738 plaintiffs have filed approximately 400 suits against us and our subsidiary, Rawl Sales & Processing Co., in the Circuit Court of Mingo County, West Virginia, for alleged property damage and personal injuries arising out of slurry injection and impoundment practices allegedly contaminating plaintiffs' water wells. Plaintiffs seek injunctive relief and compensatory damages in excess of \$170 million and unquantified punitive damages. Specifically, plaintiffs are claiming that defendants' activities during the period of 1978 through 1987 rendered their property valueless and request monetary damages to pay, inter alia, the value of their property and future water bills. In addition, many plaintiffs are also claiming that their exposure to the contaminated well water caused neurological injury or physical injury, including cancers, kidney problems and gall stones. Finally, all plaintiffs claimed entitlement to medical monitoring for the next 30 years and have requested unliquidated compensatory damages for pain and suffering, annoyance and inconvenience and legal fees. The trial is scheduled for May 12, 2009. On April 30, 2009, the Court held a mandatory settlement conference. At that settlement conference, all plaintiffs agreed to settle and dismiss their medical monitoring claims. Additionally, 179 plaintiffs agreed to settle all of their remaining claims and be dismissed from the case. The Court is currently considering whether to dismiss the claims of an additional 180 plaintiffs who did not attend the mandatory settlement conference. All settlements to date will be funded by insurance proceeds.

We do not believe there was any contamination caused by our activities or that plaintiffs suffered any damage and, therefore, we do not believe we have a probable loss related to this matter. We plan to vigorously contest these claims. We believe that we have insurance coverage applicable to these matters and have initiated litigation against our insurers to establish that coverage. At this time, we believe that the litigation by the plaintiffs will be resolved without a material adverse impact on our cash flows, results of operations or financial condition.

Surface Mining Fills

Since September 2005, three environmental groups sued the United States Army Corps of Engineers ("Corps") in the United States District Court for the Southern District of West Virginia (the "District Court"), asserting the Corps unlawfully issued permits to four of our surface mines to construct mining fills. The suit alleges the Corps failed to comply with the requirements of both Section 404 of the Clean Water Act and the National Environmental Policy Act, including preparing environmental impact statements for individual permits. We intervened in the suit to protect our interests. On March 23, 2007, the District Court rescinded four of our subsidiaries' permits, resulting in the temporary suspension of mining at these surface mines. We appealed that ruling to the United States Court of Appeals for the Fourth Circuit (the "Fourth Circuit Court"). On April 17, 2007, the District Court partially stayed its ruling, permitting mining to resume in certain fills that were already under construction. On June 14, 2007, the District Court issued an additional ruling, finding the Corps improperly approved placement of sediment ponds in streams below fills on the four permits in question. The District Court subsequently modified its ruling to allow these ponds to remain in place, as the ponds and fills have already been constructed. The District Court's ruling could impact the issuance of permits for the placement of sediment ponds for future operations. If the permits for the fills or sediment ponds are ultimately held to be unlawfully issued, production could be affected at these surface mines, and the process of obtaining new Corps permits for all surface mines could become more difficult. We appealed both rulings to the Fourth Circuit Court. A hearing on these appeals was held on September 23, 2008, and on February 13, 2009, the Fourth Circuit Court reversed the prior rulings of the District Court and remanded the matter for further proceedings. On March 30, 2009, the Plaintiffs requested that the Fourth Circuit Court reconsider the case. Until the Fourth Circuit Court disposes of this request, its February 13, 2009 order will not take final effect. We do not expect any material adverse impact to our operations through 2009 and will continue to monitor developments in the matter.

Aracoma Mine Fire

In January 2006, one of our subsidiaries, Aracoma Coal Company, Inc. (“Aracoma”), experienced a mine fire that resulted in the deaths of two miners. The estates of the two miners had filed a lawsuit in the Circuit Court of Logan County against us, A.T. Massey and Aracoma with respect to the incident. A settlement was reached and paid in December 2008, with a portion of the settlement being paid through insurance proceeds.

Additionally, the United States Attorney’s Office in the Southern District of West Virginia and the Federal Mine Safety and Health Administration (“MSHA”) conducted separate investigations into the incident. As a result of those investigations, Aracoma pleaded guilty to federal charges and agreed to pay \$2.5 million in criminal fines. Aracoma also reached a settlement with MSHA in which Aracoma agreed to pay \$1.7 million in administrative penalties. The plea was approved by the U.S. District Court in the Southern District of West Virginia on April 15, 2009. These fines and penalties were accrued as of December 31, 2008 and were paid in the first quarter of 2009.

Customer Disputes

We have customers who claim they did not receive, or did not timely receive, all of the coal required to be shipped to them during 2008 (“unshipped tons”). In such cases, it is typical for a customer and coal producer to agree upon a schedule for shipping unshipped tons in subsequent years. A few of our customers, however, have notified us of claims or potential claims for cover damages, which are equal to the difference between the contract price of the coal that was not delivered and the market price of replacement coal or comparable quality coal.

We believe we have strong defenses to these claims or potential claims for cover damages. In many cases, there was untimely or insufficient delivery of railcars by the rail carrier or the customer. In other cases, factors beyond our control caused production or shipment problems. Additionally, we believe that certain customers previously agreed to accept unshipped tons in subsequent years. We believe that all of these factors, and other factors, provide defenses to claims or potential claims for unshipped tons.

We are currently in the process of arbitration and litigation over multiple claims for cover by one customer. In October and November 2008, this customer failed to pay approximately \$35 million owed to us for several shipments of coal. The customer notified us that it had offset the amounts from its required payments in response to damages allegedly suffered due to alleged shortfalls that occurred prior to September 30, 2008. We believe this offset was improper and are pursuing collection of the amounts offset through a demand for arbitration filed against the customer in December 2008 and through our response to litigation initiated by the customer on a portion of the shortfalls. Additionally, one other customer filed suit in February 2009 seeking unspecified damages relating to alleged shortfalls and other customers have notified us of claims or potential claims for cover damages that have not yet resulted in litigation. Discussions with these customers remain ongoing.

Separately, we are currently in talks with a few other customers regarding disagreements over other contract matters. Specifically, we have disputes with two customers regarding whether or not binding contracts for the sale of coal were reached. One of these customers has improperly terminated a signed, higher-priced contract and argues that it was only required to purchase coal under a purported agreement reached by email. The other customer argues that it reached agreement with us in the absence of a signed agreement and has brought litigation against us for not honoring an alleged unsigned agreement. We do not believe that we have failed to honor any binding agreement with these customers.

We believe that we have strong defenses to these claims and potential claims and further feel that many or all of these claims may be resolved without litigation. We have recorded an accrual for our best estimate of probable losses related to these matters. While we believe that all of these matters discussed above will be resolved without a material adverse impact on our cash flows, results of operations or financial condition, it is reasonably possible that our judgments regarding some or all of these matters could change in the near term. The aggregate exposure related to these claims in excess of our accrual is up to \$105 million of charges that would affect our future operating results and financial position.

Spartan Unfair Labor Practice Matter & Related Age Discrimination Class Action

In 2005, the UMWA filed an unfair labor practice charge with the National Labor Relations Board (“NLRB”) alleging that one of our subsidiaries, Spartan Mining Company (“Spartan”), discriminated on the basis of anti-union animus in its employment offers. The NLRB issued a complaint and an NLRB Administrative Law Judge (“ALJ”) issued a recommended decision making detailed findings that Spartan committed a number of unfair labor practice violations and awarding, among other relief, backpay damages to union discriminatees. The ALJ’s decision is on appeal to the NLRB. There is no insurance coverage applicable to the unfair labor practice matter; however, its resolution is not expected to materially impact our finances or operations.

On November 1, 2006, a class action age discrimination civil case was filed in West Virginia’s Fayette County Circuit Court. The suit alleges that Spartan discriminated against employment applicants on the basis of age. The class includes approximately 232 individuals, 85 of whom are also union discriminatees at issue in the ALJ’s decision. The plaintiffs seek back pay, front pay, punitive damages, and other compensatory damages, plus attorney fees. We have insurance coverage applicable to the class action and believe that it will be resolved without material impact on our cash flows, results of operations or financial condition.

Other Legal Proceedings

We are parties to a number of other legal proceedings, incident to our normal business activities. These include contract dispute, personal injury, property damage and employment matters. While we cannot predict the outcome of these proceedings, based on our current estimates we do not believe that any liability arising from these matters individually or in the aggregate should have a material adverse impact upon our consolidated cash flows, results of operations or financial condition. It is possible, however, that the ultimate liabilities in the future with respect to these lawsuits and claims, in the aggregate, may be materially adverse to our cash flows, results of operations or financial condition.

(14) Accounting Pronouncements

In January 2009, the FASB issued FASB Staff Position SFAS 107-b, “Disclosures about Fair Value of Financial Instruments” (“FSP SFAS 107-b”) and APB Opinion No. 28-a, “Interim Financial Reporting” (“APB 28-a”). This proposal amends FASB Statement No. 107, “Disclosures about Fair Values of Financial Instruments,” to require disclosures about fair value of financial instruments in interim financial statements as well as in annual financial statements. The proposal also amends APB Opinion No. 28, “Interim Financial Reporting,” to require those disclosures in all interim financial statements. This proposal is effective for interim periods ending after June 15, 2009, but early adoption is permitted for interim periods ending after March 15, 2009. We plan to adopt FSP SFAS 107-b and APB 28-a and provide the additional disclosure requirements for second quarter 2009.

In March 2009, the FASB released FASB Staff Position SFAS 157-e, “Determining Whether a Market Is Not Active and a Transaction Is Not Distressed” (“FSP SFAS 157-e”). This proposal provides additional guidance in determining whether a market for a financial asset is not active and a transaction is not distressed for fair value measurement purposes as defined in SFAS 157, “Fair Value Measurements.” FSP SFAS 157-e is effective for interim periods ending after June 15, 2009, but early adoption is permitted for interim periods ending after March 15, 2009. We plan to adopt the provisions of FSP SFAS 157-e during second quarter 2009, but do not believe this guidance will have a significant impact on our financial position, results of operations, cash flows or disclosures.

In March 2009, the FASB issued FASB Staff Position SFAS 115-a, “Accounting for Certain Investments in Debt and Equity Securities” (“FSP SFAS 115-a.”) This proposal provides guidance in determining whether impairments in debt securities are other than temporary and modifies the presentation and disclosures surrounding such instruments. FSP SFAS 115-a is effective for interim periods ending after June 15, 2009, but early adoption is permitted for interim periods ending after March 15, 2009. We plan on adopting the provisions of FSP SFAS 115-a during the second quarter 2009, but do not believe this guidance will have a significant impact on our financial position, cash flows or disclosures.

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Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis is provided to increase understanding of, and should be read in conjunction with, the Condensed Consolidated Financial Statements and accompanying notes included in this Quarterly Report on Form 10-Q and our Annual Report on Form 10-K for the year ended December 31, 2008.

Forward-Looking Information

From time to time, we make certain comments and disclosures in reports, including this report, or through statements made by our officers that may be forward-looking in nature. Examples include statements related to our future outlook, anticipated capital expenditures, projected cash flows and borrowings and sources of funding. We caution readers that forward-looking statements, including disclosures that use words such as "target," "goal," "objective," "believe," "anticipate," "expect," "estimate," "intend," "may," "plan," "project," "will" and similar words or statements are subject to certain risks, trends and uncertainties that could cause actual cash flows, results of operations, financial condition, cost reductions, acquisitions, dispositions, financing transactions, operations, expansion, consolidation and other events to differ materially from the expectations expressed or implied in such forward-looking statements. Any forward-looking statements are also subject to a number of assumptions regarding, among other things, future economic, competitive and market conditions. These assumptions are based on facts and conditions, as they exist at the time such statements are made as well as predictions as to future facts and conditions, the accurate prediction of which may be difficult and involve the assessment of circumstances and events beyond our control. We disclaim any intent or obligation to update these forward-looking statements unless required by securities law, and we caution the reader not to rely on them unduly.

We have based any forward-looking statements we have made on our current expectations and assumptions about future events and circumstances that are subject to risks, uncertainties and contingencies that could cause results to differ materially from those discussed in the forward-looking statements, including, but not limited to:

- (i) our cash flows, results of operation or financial condition;
- (ii) the successful completion of acquisition, disposition or financing transactions and the effect thereof on our business;
- (iii) governmental policies, laws, regulatory actions and court decisions affecting the coal industry or our customers' coal usage;
- (iv) legal and administrative proceedings, settlements, investigations and claims and the availability of insurance coverage related thereto;
- (v) inherent risks of coal mining beyond our control, including weather and geologic conditions or catastrophic weather-related damage;
- (vi) our production capabilities to meet market expectations and customer requirements;
- (vii) our ability to obtain coal from brokerage sources or contract miners in accordance with their contracts;
- (viii) our ability to obtain and renew permits necessary for our existing and planned operations in a timely manner;
- (ix) the cost and availability of transportation for our produced coal;
- (x) our ability to expand our mining capacity;
- (xi) our ability to manage production costs, including labor costs;
- (xii) adjustments made in price, volume or terms to existing coal supply agreements;
- (xiii) the worldwide market demand for coal, electricity and steel;



- (xiv) environmental concerns related to coal mining and combustion and the cost and perceived benefits of alternative sources of energy such as natural gas and nuclear energy;
- (xv) competition among coal and other energy producers, in the United States and internationally;
- (xvi) our ability to timely obtain necessary supplies and equipment;
- (xvii) our reliance upon and relationships with our customers and suppliers;
- (xviii) the creditworthiness of our customers and suppliers;
- (xix) our ability to attract, train and retain a skilled workforce to meet replacement or expansion needs;
- (xx) our assumptions and projections concerning economically recoverable coal reserve estimates;
- (xxi) our failure to enter into anticipated new contracts;
- (xxii) future economic or capital market conditions;
- (xxiii) foreign currency fluctuations;
- (xxiv) the availability and costs of credit, surety bonds and letters of credit that we require;
- (xxv) the lack of insurance against all potential operating risks;
- (xxvi) our assumptions and projections regarding pension and other post-retirement benefit liabilities;
- (xxvii) our interpretation and application of accounting literature related to mining specific issues; and
- (xxviii) the successful implementation of our strategic plans and objectives for future operations and expansion or consolidation.

We are including this cautionary statement in this Quarterly Report on Form 10-Q to make applicable and take advantage of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 for any forward-looking statements made by, or on behalf, of us. Any forward-looking statements should be considered in context with the various disclosures made by us about our businesses in our public filings with the SEC, including without limitation the risk factors more specifically described in Part II Item 1A. Risk Factors of this Quarterly Report on Form 10-Q and in Part I Item 1A. Risk Factors of our Annual Report on Form 10-K for the year ended December 31, 2008.

Available Information

We file our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, proxy statements and other information with the SEC. Our SEC filings are available to the public over the Internet at the SEC's website at www.sec.gov. You may also read and copy any document we file at the SEC's public reference room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. We make available, free of charge through our Internet website, www.masseyenergyco.com (which website is not incorporated by reference into this report), our annual report, quarterly reports, current reports, proxy statements, section 16 reports and other information (and any amendments thereto) as soon as practicable after filing or furnishing the material to the SEC, in addition to our Corporate Governance Guidelines, codes of ethics and the charters of the Audit, Compensation, Executive, Finance, Governance and Nominating, and Safety, Environmental, and Public Policy Committees. These materials also may be requested at no cost by telephone at (866) 814-6512 or by mail at: Massey Energy Company, Post Office Box 26765, Richmond, Virginia 23261, Attention: Investor Relations.

Executive Overview

We operate coal mines and processing facilities in Central Appalachia, which generate revenues and cash flow through the mining, processing and selling of steam and metallurgical grade coal, primarily of a low sulfur content. We also generate income and cash flow through other coal-related businesses, including the management of material handling facilities. Other revenue is obtained from royalties, rentals, gas well revenues, gains on the sale of non-strategic assets and miscellaneous income.

We reported net income for the first quarter of \$43.4 million, or \$0.51 per diluted share, compared to \$41.9 million, or \$0.52 per diluted share, for the first quarter of 2008. The reported net income for the first quarter of 2009 included a pre-tax gain of \$7.1 million (\$0.07 per basic share) on the sale of certain coal reserves and the recognition of \$12.2 million in pre-tax income (\$0.11 per basic share) (\$5.1 million benefit recorded in Cost of purchased coal revenue and \$7.1 million in interest income) from the receipt of black lung excise tax refunds as authorized by federal legislation passed in October 2008. Results for the first quarter of 2008 included a \$13.6 million pre-tax gain (\$0.13 per basic share) on an exchange of coal reserves.

Produced tons sold were 10.8 million in the quarter, compared to 9.6 million in the first quarter of 2008. We produced 11.4 million and 10.0 million tons in the first quarter of 2009 and 2008, respectively. The higher coal production in 2009 was primarily the result of new mines started in 2008. Exports decreased to 1.6 million tons versus 1.8 million tons in the first quarter of 2009 versus 2008. Quarterly shipments of produced tons for the remaining quarters in 2009 are expected to be lower than during the first quarter of 2009. Increasing coal stockpiles and weak demand for electric power generation and steel production in both domestic and international markets have created challenges among our customer base to accept shipments of coal according to contracted schedules. We are working with our customers to modify shipment schedules and amend contract terms where necessary or appropriate, which may affect our revenues and margins in future periods.

During the first quarter of 2009, Produced coal revenue increased by 25% compared to the first quarter of 2008 reflecting higher shipments in 2009 and a 12% increase in average produced coal revenue per ton sold. Our average Produced coal revenue per ton sold in the first quarter of 2009 increased to \$63.03 compared to \$56.36 in the first quarter of 2008. Our average Produced coal revenue per ton in the first quarter of 2009 for metallurgical tons sold increased by 28% to \$102.99 from \$80.63 in the first quarter of 2008. The improvement in average Produced coal revenue per ton is largely attributable to prices contracted during a period of increased demand and resultant higher pricing for all grades of coal in the United States secured in new coal sales agreements as lower-priced contracts expired.

Our Average cash cost per ton sold (see Note 1 below) was \$52.55, compared to \$45.62 in the previous year's first quarter. The increased cost level is primarily due to higher sales-related costs from the growth in average per ton realization, increased trucking and equipment rental costs, and higher labor costs, that more than offset lower stock-based compensation accruals. In response to the current difficult market conditions, we have taken certain actions to reduce overall costs including the idling of several higher cost mines, limitation of overtime, selective general and administrative cost reductions, renegotiation of supply contracts and the implementation of significant wage and benefit reductions beginning on May 1, 2009. Additional cost cutting initiatives are under consideration for implementation during the remainder of 2009.

The continuing recession, credit crisis and related turmoil in the global financial system has had and may continue to have a negative impact on our business, financial condition and liquidity. We may face significant future challenges if conditions in the financial markets do not improve or continue to worsen. Worldwide demand for coal has been adversely impacted, particularly for our metallurgical grade coals, which we expect will have a negative effect on our revenues. The competitiveness of coal exported from the United States has been negatively impacted by strengthening of the U.S. dollar and the decline of freight costs of ocean going vessels allowing coal produced in more distant countries, such as Australia, to compete with U.S. exports in the Atlantic Basin. Moreover, volatility and disruption of financial markets could affect the creditworthiness of our customers and/or limit our customers' ability to obtain adequate financing to maintain operations and result in a further decrease in sales volume that could have a negative impact on our cash flows, results of operations or financial condition.

Note 1: Average cash cost per ton is calculated as the sum of Cost of produced coal revenue and Selling, general and administrative expense (excluding Depreciation, depletion and amortization), divided by the number of produced tons sold. Although Average cash cost per ton is not a measure of performance calculated in accordance with accounting principles generally accepted in the United States (“GAAP”), management believes that it is useful to investors in evaluating us because it is widely used in the coal industry as a measure to evaluate a company’s control over its cash costs. Average cash cost per ton should not be considered in isolation or as a substitute for measures of performance in accordance with GAAP. In addition, because Average cash cost per ton is not calculated identically by all companies, the presentation here may not be comparable to other similarly titled measures of other companies. The table below reconciles the GAAP measure of Total costs and expenses to Average cash cost per ton.

	Three Months Ended			
	March 31, 2009		March 31, 2008	
	\$	per ton	\$	per ton
	(In Millions, Except Per Ton Amounts)			
Total costs and expenses	\$ 695.3		\$ 575.6	
Less: Freight and handling costs	57.8		65.0	
Less: Cost of purchased coal revenue	5.2		9.9	
Less: Depreciation, depletion and amortization	72.6		60.2	
Less: Other expense	0.8		0.8	
Less: Gain on derivative instruments	(8.9)		-	
Average cash cost	<u>\$ 567.8</u>	<u>\$52.55</u>	<u>\$ 439.7</u>	<u>\$45.62</u>

Results of Operations

Three months ended March 31, 2009 compared to three months ended March 31, 2008

Revenues

	Three Months Ended March 31,		Increase (Decrease)	% Increase (Decrease)
	2009	2008		
	(In Thousands)			
Revenues				
Produced coal revenue	\$ 681,027	\$ 543,231	\$ 137,796	25%
Freight and handling revenue	57,782	65,042	(7,260)	(11)%
Purchased coal revenue	9,940	10,674	(734)	(7)%
Other revenue	19,339	25,678	(6,339)	(25)%
Total revenues	<u>\$ 768,088</u>	<u>\$ 644,625</u>	<u>\$ 123,463</u>	19%

The following is a breakdown by market served of the changes in produced tons sold and average produced coal revenue per ton sold for the first quarter of 2009 compared to the first quarter of 2008:

	Three Months Ended March 31,		Increase (Decrease)	% Increase (Decrease)
	2009	2008		
	(In Millions, Except Per Ton Amounts)			
<u>Produced tons sold:</u>				
Utility	8.3	6.3	2.0	32%
Metallurgical	1.8	2.3	(0.5)	(22)%
Industrial	0.7	1.0	(0.3)	(30)%
Total	<u>10.8</u>	<u>9.6</u>	<u>1.2</u>	13%
<u>Produced coal revenue per ton sold:</u>				
Utility	\$ 54.14	\$ 47.89	\$ 6.25	13%
Metallurgical	102.99	80.63	22.36	28%
Industrial	65.34	55.21	10.13	18%
Weighted average	<u>\$ 63.03</u>	<u>\$ 56.36</u>	<u>\$ 6.67</u>	12%

Shipments of utility coal increased in the first three months of 2009 compared to the same period in 2008 as production of utility quality coal increased, mainly as a result of new mines started in 2008. Shipments of metallurgical and industrial coal declined during the first three months of 2009 compared to the same period in 2008 due to lower customer demand, as the United States and world economies suffered through a continuing severe recession. The average per ton sales price for utility, metallurgical and industrial coal were higher in the first three months of 2009 compared to the first three months of 2008, attributable to prices contracted during prior periods when demand and pricing were elevated for all grades of coal in the United States.

Freight and handling revenue decreased due to a reduction in fuel surcharges in the first quarter of 2009 compared to the first quarter of 2008, and by a decrease in export tons sold from 1.8 million in the first quarter of 2008 to 1.6 million in the first quarter of 2009.

Other revenue includes refunds on railroad agreements, royalties related to coal lease agreements, gas well revenue, gains on the sale of non-strategic assets and reserve exchanges, joint venture revenue and other miscellaneous revenue. Other revenue for the first quarter of 2009 includes a pre-tax gain of \$7.1 million on the sale of our interest in certain coal reserves to a third party (see Note 4 to the Notes to Condensed Consolidated Financial Statements for further discussion). In addition, royalty income was higher in 2009 than in 2008, offset by lower railroad refund income in 2009 compared to 2008. Other revenue for the first quarter of 2008 includes a pre-tax gain of \$13.6 million on an exchange of coal reserves.



Costs

	Three Months Ended March 31,		Increase (Decrease)	% Increase (Decrease)
	2009	2008		
	(In Thousands)			
Costs and expenses				
Cost of produced coal revenue	\$ 545,925	\$ 418,227	\$ 127,698	31%
Freight and handling costs	57,782	65,042	(7,260)	(11)%
Cost of purchased coal revenue	5,206	9,864	(4,658)	(47)%
Depreciation, depletion and amortization, applicable to:				
Cost of produced coal revenue	71,618	59,348	12,270	21%
Selling, general and administrative	1,021	904	117	13%
Selling, general and administrative	21,870	21,479	391	2%
Other expense	783	786	(3)	0%
Gain on derivative instruments	(8,867)	-	(8,867)	100%
Total costs and expenses	<u>\$ 695,338</u>	<u>\$ 575,650</u>	<u>\$ 119,688</u>	21%

Cost of produced coal revenue increased primarily due to increased volume of produced tons sold from 9.6 million in the first quarter of 2008 to 10.8 million in the first quarter of 2009. Other reasons for the cost increase are additional sales-related costs on higher produced coal revenues, which include additional production royalties and severance taxes, increased trucking and equipment rental costs and higher labor costs.

Freight and handling costs decreased due to a reduction in fuel surcharges in the first quarter of 2009 compared to the first quarter of 2008, and by a decrease in export tons sold from 1.8 million in the first quarter of 2008 to 1.6 million in the first quarter of 2009.

Cost of purchased coal revenue decreased due to a \$5.1 million black lung excise tax refund recorded in the first quarter of 2009.

Depreciation, depletion and amortization increased due to higher production levels and increased capital expenditures in recent prior periods.

Gain on derivative instruments represents net gains of \$8.9 million related to purchase and sales contracts that qualify as derivatives (see Note 11 to the Notes to Condensed Consolidated Financial Statements for further discussion).

Interest Income

Interest income increased due to a \$7.1 million black lung excise tax refund recorded in the first quarter of 2009 offset by a significant reduction in interest earned on money market funds.

Interest Expense

Interest expense increased due to the adoption of FSP APB 14-1 during the first quarter 2009 resulting in additional interest expense of \$4.5 million in the first quarter of 2009 (see Note 5 to the Notes to Condensed Consolidated Financial Statements for further discussion).

Income Taxes

Our effective tax rate is sensitive to changes in estimates of annual pre-tax earnings and percentage depletion. The increase in the effective tax rate from the first quarter of 2008 to the first quarter of 2009 is primarily the result of differences in pre-tax income, the impact of percentage depletion and projected changes in temporary taxable and deductible differences. Our first quarter 2008 income tax benefit was impacted by a favorable adjustment for interest received from the IRS in connection with the closing of a prior period audit.

Liquidity and Capital Resources

At March 31, 2009, our available liquidity was \$666.2 million, comprised of Cash and cash equivalents of \$566.7 million and \$99.5 million of availability from our asset-based revolving credit facility. We also have a \$24.9 million investment in the Primary Fund, which is recorded in Short-term investment. Our total debt-to-book capitalization ratio was 52.9% at March 31, 2009.

Our Debt was comprised of the following:

	March 31, 2009	As Adjusted December 31, 2008
	(In Thousands)	
6.875% senior notes due 2013, net of discount of \$3,792 and \$3,959, respectively	\$ 756,208	\$ 756,041
3.25% convertible senior notes due 2015, net of discount of \$148,916 and \$153,462, respectively	522,084	517,538
6.625% senior notes due 2010	21,949	21,949
2.25% convertible senior notes due 2024	9,647	9,647
4.75% convertible senior notes due 2023	70	70
Capital lease obligations	6,441	6,912
Total debt	1,316,399	1,312,157
Amounts due within one year	(2,048)	(1,976)
Total long-term debt	<u>\$ 1,314,351</u>	<u>\$ 1,310,181</u>

We believe that we are currently in compliance with all of our debt covenants.

Common Stock Offering Program

On February 3, 2009, pursuant to Rule 424(b)(5), we filed a prospectus supplement with the Securities and Exchange Commission ("SEC") allowing us to sell up to 5.0 million shares of Common Stock from time to time at our discretion. The proceeds from any shares of Common Stock sold will be used for general corporate purposes, which may include funding for acquisitions or investments in business, products, technologies, and repurchases and repayment of our indebtedness. As of March 31, 2009, no shares of Common Stock had been sold pursuant to this program.

Cash Flow

Net cash provided by operating activities was \$40.9 million for the three months ended March 31, 2009 compared to \$137.4 million for the three months ended March 31, 2008. Cash provided by operating activities reflects Net income adjusted for non-cash charges and changes in working capital requirements.

Net cash utilized by investing activities was \$75.6 million and \$122.2 million for the three months ended March 31, 2009 and 2008, respectively. The cash used in investing activities reflects capital expenditures in the amount of \$103.7 million and \$123.5 million for the three months ended March 31, 2009 and 2008, respectively. These capital expenditures are for replacement of mining equipment, the expansion of mining and shipping capacity and projects to improve the efficiency of mining operations. Additionally, the three months ended March 31, 2009 and 2008 included \$13.6 million and \$1.4 million, respectively, of proceeds provided by the sale of assets.

Net cash utilized by financing activities was \$5.6 million compared to net cash provided of \$10.6 million for the three months ended March 31, 2009 and 2008, respectively. Financing activities for the three months ended March 31, 2009 and 2008 primarily reflects change in debt levels, as well as the exercising of stock options and payments of dividends.

We believe that cash on hand, cash generated from operations and our borrowing capacity will be sufficient to meet our working capital requirements, scheduled debt payments, potential share repurchases and debt repurchases, anticipated dividend payments, expected settlements of outstanding litigation and anticipated capital expenditures for at least the next twelve months. Nevertheless, our ability to satisfy our debt service obligations, repurchase shares and debt, pay dividends, pay settlements or judgments in respect of pending litigation or fund planned capital expenditures, will substantially depend upon our future operating performance, which will be affected by prevailing economic conditions in the coal industry, debt covenants and financial, business and other factors, some of which are beyond our control. We frequently evaluate potential acquisitions. In the past, we have funded acquisitions primarily with cash generated from operations. As a result of the cash needs we have described above and possible acquisition opportunities, in the future we may consider a variety of financing sources, including debt or equity financing. Currently, other than our asset-based revolving credit facility, we have no commitments for any additional financing. We cannot be certain that we can obtain additional financing on terms that we find acceptable, if at all, through the issuance of equity securities or the incurrence of additional debt. Additional equity financing may dilute our stockholders, and debt financing, if available, may among other things, restrict our ability to repurchase shares of Common Stock, declare and pay dividends and raise future capital. If we are unable to obtain additional needed financing, it may prohibit us from making acquisitions, capital expenditures and/or investments, which could materially and adversely affect our prospects for long-term growth.

Certain Trends and Uncertainties

In addition to trends and uncertainties set forth below, please refer to “Certain Trends and Uncertainties” of Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operation, of our Annual Report on Form 10-K for the year ended December 31, 2008, for a discussion of certain trends and uncertainties that may impact our business.

We must obtain governmental permits and approvals for mining operations, which can be a costly and time-consuming process, can result in restrictions on our operations, and is subject to litigation that may delay or prevent us from obtaining necessary permits.

Our operations are principally regulated under surface mining permits issued pursuant to the Surface Mining Control and Reclamation Act and state counterpart laws. Such permits are issued for terms of five years with the right of successive renewal. Separately, the Clean Water Act requires permits for operations that discharge into waters of the United States. Valley fills and refuse impoundments are authorized under permits issued by the Corps. The Environmental Protection Agency (the “EPA”) has the authority, which it has rarely exercised until recently, to object to permits issued by the Corps. While the Corps is authorized to issue permits even when the EPA has objections, the EPA does have the ability to override the Corps decision and “veto” the permits. Permitting under the Clean Water Act has been a frequent subject of litigation by environmental advocacy groups that has resulted in periodic declines in such permits issued by the Corps. Additionally, certain surface mines and preparation plants have permits issued pursuant to the Clean Air Act and state counterpart laws allowing and controlling the discharge of air pollutants. Regulatory authorities exercise considerable discretion in the timing of permit issuance. Requirements imposed by these authorities may be costly and time-consuming and may result in delays in, or in some instances preclude, the commencement or continuation of development or production operations. Adverse outcomes in lawsuits challenging permits or failure to comply with applicable regulations could result in the suspension, denial or revocation of required permits, which could have a material adverse impact on our cash flows, results of operations or financial condition. See also Note 13, “Contingencies” to the Notes to Condensed Consolidated Financial Statements in this Quarterly Report on Form 10-Q.

Concerns about the environmental impacts of coal combustion, including perceived impacts on global climate change, are resulting in increased regulation of coal combustion in many jurisdictions, and interest in further regulation, which could significantly affect demand for our products.

The Clean Air Act and similar state and local laws extensively regulate the amount of sulfur dioxide, particulate matter, nitrogen oxides and other compounds emitted into the air from electric power plants, which are the largest end-users of our coal. Such regulation may require significant emissions control expenditures for many coal-fired power plants. As a result, the generators may switch to other fuels that generate less of these emissions or install more effective pollution control equipment, possibly reducing future demand for coal and the construction of coal-fired power plants. The majority of our coal supply agreements contain provisions that allow a purchaser to terminate its contract if legislation is passed that either restricts the use or type of coal permissible at the purchaser’s plant or results in specified increases in the cost of coal or its use.

Global climate change continues to attract considerable public and scientific attention. Widely publicized scientific reports, such as the Fourth Assessment Report of the Intergovernmental Panel on Climate Change released in 2007, have also engendered widespread concern about the impacts of human activity, especially fossil fuel combustion, on global climate change. A considerable and increasing amount of attention in the United States is being paid to global climate change and to reducing greenhouse gas emissions, particularly from coal combustion by power plants. According to the EIA report, "Emissions of Greenhouse Gases in the United States 2007," coal combustion accounts for 30% of man-made greenhouse gas emissions in the United States. Legislation was introduced in Congress in the past several years to reduce greenhouse gas emissions in the United States and, although no bills to reduce such emissions have yet passed either house of Congress, bills to reduce such emissions remain pending and others are likely to be introduced. In April, the EPA released a proposed rule making an "endangerment finding" with respect to six greenhouse gases, including carbon dioxide, due to effects on public health and welfare; if finalized, such a finding would trigger the process under the Clean Air Act for developing air quality standards for these greenhouse gases and establishing emission standards for sources. Further developments in connection with legislation, regulations or other limits on greenhouse gas emissions and other environmental impacts from coal combustion, both in the United States and in other countries where we sell coal, could have a material adverse effect on our cash flows, results of operations or financial condition.

Off-Balance Sheet Arrangements

In the normal course of business, we are a party to certain off-balance sheet arrangements including guarantees, operating leases, indemnifications and financial instruments with off-balance sheet risk, such as bank letters of credit and performance or surety bonds. Liabilities related to these arrangements are not reflected in our Condensed Consolidated Balance Sheets, and, except for the operating leases, we do not expect any material impact on our cash flows, results of operations or financial condition to result from these off-balance sheet arrangements.

From time to time we use bank letters of credit to secure our obligations for workers' compensation programs, various insurance contracts and other obligations. At March 31, 2009, we had \$120.5 million of letters of credit outstanding of which \$45.0 million was collateralized by \$46.0 million of cash deposited in restricted, interest bearing accounts pledged to issuing banks and \$75.5 million was issued under our asset based lending arrangement. No claims were outstanding against those letters of credit as of March 31, 2009.

We use surety bonds to secure reclamation, workers' compensation, wage payments and other miscellaneous obligations. As of March 31, 2009, we had \$327.9 million of outstanding surety bonds. These bonds were in place to secure obligations as follows: post-mining reclamation bonds of \$318.8 million and other miscellaneous obligation bonds of \$9.1 million. Outstanding surety bonds of \$46.1 million are secured with letters of credit.

Generally, the availability and market terms of surety bonds continue to be challenging. If we are unable to meet certain financial tests applicable to some of our surety bonds, or to the extent that surety bonds otherwise become unavailable, we would need to replace the surety bonds or seek to secure them with letters of credit, cash deposits or other suitable forms of collateral.

Critical Accounting Estimates and Assumptions

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect reported amounts. These estimates and assumptions are based on information available as of the date of the financial statements. Accounting measurements at interim dates inherently involve greater reliance on estimates than at year-end. The results of operations for the quarterly period ended March 31, 2009, are not necessarily indicative of results that can be expected for the full year. Please refer to the section entitled "Critical Accounting Estimates and Assumptions" of Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operation of our Annual Report on Form 10-K for the year ended December 31, 2008, for a discussion of our critical accounting estimates and assumptions.

Recent Accounting Developments

In January 2009, the FASB issued FSP SFAS 107-b and APB 28-a. This proposal amends FASB Statement No. 107, "Disclosures about Fair Values of Financial Instruments," to require disclosures about fair value of financial instruments in interim financial statements as well as in annual financial statements. The proposal also amends APB Opinion No. 28, "Interim Financial Reporting," to require those disclosures in all interim financial statements. This proposal is effective for interim periods ending after June 15, 2009, but early adoption is permitted for interim periods ending after March 15, 2009. We plan to adopt FSP SFAS 107-b and APB 28-a and provide the additional disclosure requirements for second quarter 2009.

In March 2009, the FASB released FSP SFAS 157-e. This proposal provides additional guidance in determining whether a market for a financial asset is not active and a transaction is not distressed for fair value measurement purposes as defined in SFAS 157, "Fair Value Measurements." FSP SFAS 157-e is effective for interim periods ending after June 15, 2009, but early adoption is permitted for interim periods ending after March 15, 2009. We plan to adopt the provisions of FSP SFAS 157-e during second quarter 2009, but do not believe this guidance will have a significant impact on our financial position, cash flows or disclosures.

In March 2009, the FASB issued FSP SFAS 115-a. This proposal provides guidance in determining whether impairments in debt securities are other than temporary and modifies the presentation and disclosures surrounding such instruments. FSP SFAS 115-a is effective for interim periods ending after June 15, 2009, but early adoption is permitted for interim periods ending after March 15, 2009. We plan on adopting the provisions of FSP SFAS 115-a during the second quarter 2009, but do not believe this guidance will have a significant impact on our financial position, cash flows or disclosures.

Item 3: Quantitative and Qualitative Discussions About Market Risk

In addition to quantitative and qualitative discussions about market risk set forth below, please refer to Item 7A. Quantitative and Qualitative Discussions About Market Risk of our Annual Report on Form 10-K for the year ended December 31, 2008, for a discussion of certain market risk factors, which may impact our business.

Our derivative contracts give rise to commodity price risk, which represents the potential gain or loss that can be caused by an adverse change in the price of coal. See Note 11 to the Notes to Condensed Consolidated Financial Statements for further discussion of our derivatives. The outstanding purchase and sales contracts at March 31, 2009, that are accounted for as derivative instruments in accordance with SFAS 133 are summarized as follows:

	Price Range	Tons Outstanding	Delivery Period
Purchase Contracts	\$46.00-\$98.00	1,558,750	04/01/09-12/31/09
Sales Contracts	\$48.50-\$75.00	2,574,000	04/01/09-12/31/09

As of March 31, 2009, a hypothetical increase of 10% in the forward market price would result in an additional fair value loss recorded for these derivative instruments of \$4.9 million. A hypothetical decrease of 10% in the forward market price would result in a fair value gain recorded for these derivative instruments of \$4.9 million.

Item 4: Controls and Procedures

Pursuant to Rule 13a-15(b) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), we carried out an evaluation, with the participation of our management, including our Chief Executive Officer ("CEO"), who is our principal executive officer, and Chief Financial Officer ("CFO"), who is our principal financial officer, of the effectiveness of our disclosure controls and procedures (as defined under Rule 13a-15(e) under the Exchange Act) as of the end of the period covered by this report. Based upon that evaluation, our CEO and CFO concluded that our disclosure controls and procedures are effective to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act, is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure.

There has been no change in our internal control over financial reporting during the three months ended March 31, 2009, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Our management, including our CEO and CFO, does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of the controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected.

PART II: OTHER INFORMATION

Item 1. Legal Proceedings

Information responsive to this Item 1. is contained in Note 13, "Contingencies," to the Notes to Condensed Consolidated Financial Statements in this Quarterly Report on Form 10-Q and in Part I Item 3. Legal Proceedings of our Annual Report on Form 10-K for the year ended December 31, 2008, which are incorporated herein by reference.

Item 1A. Risk Factors

We are subject to a variety of risks, including, but not limited to those referenced under the heading "Certain Trends and Uncertainties" of Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations of this Quarterly Report on Form 10-Q and those referenced herein to other Items contained in our Annual Report on Form 10-K for the year ended December 31, 2008, including Item 1. Business, under the headings "Customers and Coal Contracts," "Competition," and "Environmental, Safety and Health Laws and Regulations," Item 1A. Risk Factors, Item 3. Legal Proceedings and Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, under the headings "Critical Accounting Estimates and Assumptions," "Certain Trends and Uncertainties" and elsewhere in Management's Discussion and Analysis of Financial Condition and Results of Operations. Except as set forth under "Certain Trends and Uncertainties" and elsewhere under Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations of this Quarterly Report on Form 10-Q, we do not believe there have been any material changes to the risk factors previously disclosed in our Annual Report on Form 10-K for the year ended December 31, 2008.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

The following table summarizes information about shares of Common Stock that were purchased during the first quarter of 2009.

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs ⁽¹⁾	Maximum Number of Shares that May Yet Be Purchased Under the Plan
	(In Thousands, Except Average Price Paid Per Share)			
Jan. 1 through Jan. 31	-	-	-	-
Feb. 1 through Feb. 28	-	-	-	-
Mar. 1 through Mar. 31	-	-	-	-
Total	-	-	-	23,242,944 ⁽²⁾

- (1) We maintain a share repurchase program (the “Repurchase Program”), which was authorized by the Board of Directors and announced on November 14, 2005 that provides we may repurchase shares of Common Stock for an aggregate amount not to exceed \$500 million. The Repurchase Program does not require us to acquire any specific number of shares, may be terminated at any time and has no expiration date.
- (2) Calculated using \$420 million that may yet be purchased under the Repurchase Program and \$18.07, the closing price of Common Stock as reported on the New York Stock Exchange on May 1, 2009.

Item 6. Exhibits

- 10.1 Massey Energy Company 2006 Stock and Incentive Plan (as amended and restated effective March 25, 2009) [filed herewith]
- 31.1 Certification of Chief Executive Officer, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 [filed herewith]
- 31.2 Certification of Chief Financial Officer, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 [filed herewith]
- 32.1 Certification of Chief Executive Officer pursuant to 18 U.S.C., Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 [furnished herewith]
- 32.2 Certification of Chief Financial Officer pursuant to 18 U.S.C., Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 [furnished herewith]

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

MASSEY ENERGY
COMPANY
(Registrant)

Date: May 8, 2009

/s/ Eric B.
Tolbert
Eric B. Tolbert,
Vice President and Chief Financial Officer

Date: May 8, 2009

/s/ David W.
Owings
David W. Owings,
Controller

MASSEY ENERGY COMPANY
2006 STOCK AND INCENTIVE COMPENSATION PLAN
(As Amended and Restated Effective January 1, 2009)

As amended with repricing clarification amendments adopted on March 25, 2009
(Article XIII and Section 14.1)

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ARTICLE I
Establishment, Purpose and Duration

1.1 *Establishment of the Plan.* Massey Energy Company (hereinafter referred to as the “Company”), a Delaware corporation, hereby establishes a stock and incentive compensation plan to be known as the “2006 Stock and Incentive Compensation Plan” (hereinafter referred to as the “Plan”), as set forth in this document. Unless otherwise defined herein, all capitalized terms shall have the meanings set forth in Section 2.1 herein. The Plan permits, subject to the limitations herein, the grant of Incentive Stock Options, Non-Qualified Stock Options, Stock Appreciation Rights, Restricted Stock, Restricted Units, Unrestricted Stock, and/or Incentive Awards to Members and Non-Employee Service Providers and Non-Qualified Stock Options, Restricted Stock and Restricted Units to Non-Employee Directors.

The Plan was adopted by the Board of Directors of the Company on February 21, 2006, to become effective (the “Effective Date”) as of May 16, 2006 once approved by the Company’s shareholders at the May 16, 2006 annual meeting in accordance with applicable laws and applicable rules of the New York Stock Exchange. Awards may not be granted under the Plan prior to shareholder approval of the Plan. The Plan actually became effective once the results of the shareholder meeting were finally certified by the independent inspectors of election on June 28, 2006 and was subsequently amended effective August 15, 2006 to place further limitation on awards that did not require shareholder approval.

The Plan was further amended effective November 14, 2006 in order (1) to revise the definition of “Fair Market Value” as used in connection with valuing Stock under the Plan for awards made on or after November 14, 2006 and (2) to provide for mandatory equitable adjustments in awards outstanding under the Plan as a result of a reorganization, merger, consolidation, recapitalization, restructuring, reclassification, dividend (other than a regular, quarterly cash dividend) or other distribution, stock split, reverse stock split, spin-off or the like, or if substantially all of the property and assets of the Company are sold.

The plan was further amended effective January 1, 2009 to add provisions to comply with Section 409A of the Code.

1.2 *Purpose of the Plan.* The purpose of the Plan is to promote the success of the Company and its Subsidiaries by providing incentives to Members, Non-Employee Service Providers and/or Non-Employee Directors that will promote the identification of their personal interest with the long term financial success of the Company and with growth in shareholder value. The Plan is designed to provide flexibility to the Company in its ability to motivate, attract, and retain the services of Members, Non-Employee Service Providers and/or Non-Employee Directors upon whose judgment, interest, and special effort the successful conduct of its operation is largely dependent.

1.3 *Duration of the Plan.* The Plan shall commence on the Effective Date, as described in Section 1.1 herein, and shall remain in effect, subject to the right of the Board of Directors to terminate the Plan at any time pursuant to Article XIV herein, until May 15, 2016, at

which time the Plan shall terminate except with respect to Awards made prior to and outstanding on that date which shall remain valid in accordance with their terms.

ARTICLE II

Definitions

2.1 *Definitions.* Except as otherwise defined in the Plan, the following terms shall have the meanings set forth below:

(a) “Agreement” means a written agreement implementing the grant of each Award signed by an authorized officer of the Company or member of the Committee and by the Participant.

(b) “Award” or “Grant” means, individually or collectively, a grant under the Plan of Incentive Stock Options, Non-Qualified Stock Options, Stock Appreciation Rights, Restricted Stock, Restricted Units, Unrestricted Stock and/or Incentive Awards.

(c) “Award Date” or “Grant Date” means the date on which an Award is made by the Committee under the Plan.

(d) “Board” or “Board of Directors” means the Board of Directors of the Company.

(e) “Change in Control” means, the occurrence of either of the following events (i) a third person, including a “group” as defined in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended, acquires (or has acquired during the twelve (12)-month period ending on the date of the most recent acquisition by such person) shares of the Company having thirty (30) percent or more of the total number of votes that may be cast for the election of directors of the Company; or (ii) as the result of any cash tender or exchange offer, merger or other business combination, or any combination of the foregoing transactions (a “Transaction”), the persons who were directors of the Company before the Transaction shall cease to constitute a majority of the Board of the Company or any successor to the Company and be replaced by persons whose appointment or election is not endorsed by the majority of directors before the Transaction.

To the extent that a Participant must consent to the change of this definition, the change will not be effective unless such consent is obtained. To the extent that a Participant’s consent has not been obtained, the definition in effect immediately prior to this amendment shall be controlling with regard to such Participant.

(f) “Code” means the Internal Revenue Code of 1986, as amended from time to time.

(g) “Committee” means the committee or committees of the Board appointed to administer the Plan pursuant to Article III herein. With respect to Awards granted pursuant to the Plan to Members and Non-Employee Service Providers, all of the members of the Committee shall be “non-employee directors” as defined in Rule 16b-3, as amended, under the Exchange Act, or any similar or successor rule, and “outside directors” within the meaning of Section

162(m)(4)(C)(i) of the Code. Unless otherwise determined by the Board, the Compensation Committee of the Board, or any successor committee responsible for executive compensation, shall constitute the Committee with respect to Awards to Members, Non-Employee Service Providers, and Non-Employee Directors.

(h) “Company” means Massey Energy Company, a Delaware corporation, or any successor thereto as provided in Article XVI herein.

(i) “Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time.

(j) “Fair Market Value” of a Share for purposes of this Plan means as of any date, the closing market price (that is, the price at which Shares were last sold in the regular way on the New York Stock Exchange) of the Stock on the relevant date if it is a trading date or, if no Shares so traded on the New York Stock Exchange on the date in question, then for the next preceding date for which Shares so traded on the New York Stock Exchange or if, in the opinion of the Committee, this method is inapplicable or inappropriate for any reason, the fair market value as determined pursuant to a reasonable method adopted by the Committee in good faith for such purpose.

(k) “Incentive Award” means an Award, designated as an Incentive Award, which is a bonus opportunity awarded under Article XI herein pursuant to which a Participant may become entitled to receive an amount (which may be payable in cash, Shares or other property) based on satisfaction of such performance criteria as are specified in the Agreement evidencing the Award.

(l) “Incentive Stock Option” or “ISO” means an option to purchase Stock, granted under Article VI herein, which is designated as an incentive stock option and meets the requirements of Section 422 of the Code.

(m) “Member” means a current or prospective member employed as a common law employee of the Company or any Subsidiary (including any corporation, partnership, limited liability company or joint venture which becomes a Subsidiary after the adoption of the Plan by the Board).

(n) “Non-Employee Director” means a director of the Company or any Subsidiary who is not a common law employee of the Company or any Subsidiary (including any corporation, partnership, limited liability company or joint venture which becomes a Subsidiary after the adoption of the Plan by the Board).

(o) “Non-Employee Service Provider” means a consultant, advisor or other independent contractor providing services to the Company or any Subsidiary (including any corporation, partnership, limited liability company or joint venture which becomes a Subsidiary after the adoption of the Plan by the Board).

(p) “Non-Qualified Stock Option” or “NQSO” means an option to purchase Stock, granted under Article VI herein, which is not an Incentive Stock Option.

(q) “Option” means an Incentive Stock Option or a Non-Qualified Stock Option.

(r) “Option Price” means the exercise price per share of Stock covered by an Option.

(s) “Participant” means a Member, a Non-Employee Service Provider or a Non-Employee Director who has been granted an Award or Grant under the Plan and whose Award or Grant remains outstanding.

(t) “Performance-Based Compensation Award” means any Award for which exercise, full enjoyment or receipt thereof by the Participant is contingent on satisfaction or achievement of a Performance Goal applicable thereto. If a Performance-Based Compensation Award is intended to be “performance-based compensation” within the meaning of Section 162(m)(4)(C) of the Code, the grant of the Award, the establishment of the Performance Goal, the making of any modifications or adjustments and the determination of satisfaction or achievement of the Performance Goal shall be made during the period or periods required under and in conformity with the requirements of Section 162(m) of the Code. The terms and conditions of each Performance-Based Compensation Award, including the Performance Goal and Performance Period, shall be set forth in an Agreement or in a subplan of the Plan which is incorporated by reference into an Agreement.

(u) “Performance Goal” means one or more performance measures or goals set by the Committee in its discretion for each grant of a Performance-Based Compensation Award. The extent to which such performance measures or goals are met will determine the amount or value of the Performance-Based Compensation Award to which a Participant is entitled to exercise, receive or retain. For purposes of this Plan, a Performance Goal may include any one or more of the following performance criteria, either individually, alternatively or in any combination, applied to either the Company as a whole or to a business unit, subsidiary or business segment, either individually, alternatively or in any combination, and measured either annually or cumulatively over a period of years, on an absolute basis or relative to a pre-established target, to previous years’ results or to a designated comparison group, in each case as specified by the Committee in the Award: (i) cash flow, (ii) earnings (including gross margin, earnings before interest, taxes, depreciation and amortization (“EBITDA”), earnings before interest and taxes (“EBIT”), earnings before taxes (“EBT”), and net earnings), (iii) earnings per share (basic or diluted), (iv) growth in earnings or earnings per share, (v) stock price, (vi) return on equity or average stockholders’ equity, (vii) total stockholder return, (viii) return on capital, (ix) return on assets or net assets, (x) return on investment, (xi) revenue, (xii) produced tons, (xiii) delivered tons, (xiv) reserve acquisitions, (xv) income or net income, (xvi) operating income or net operating income, (xvii) operating profit or net operating profit, (xviii) operating margin, (xix) return on operating revenue, (xx) market share, (xxi) contract awards or backlog, (xxii) overhead or other expense reduction, (xxiii) growth in stockholder value relative to the one- or two-year moving average of the S&P 600 Smallcap Index, Bloomberg U.S. Coal Index, or other index of which the Company is a part, (xxiv) credit rating, (xxv) strategic plan development and

implementation, (xxvi) succession plan development and implementation, (xxvii) retention of executive talent, (xxviii) improvement in workforce diversity, (xxix) improvement in safety records, (xxx) capital resource management plan development and implementation, (xxxi) improved internal financial controls plan development and implementation, (xxxii) corporate tax savings, (xxxiii) corporate cost of capital reduction, (xxxiv) investor relations program development and implementation, (xxxv) corporate relations program development and implementation, (xxxvi) public policy accomplishments, (xxxvii) executive performance plan development and implementation, and (xxxviii) tax provision rate for financial statement purposes.

The Committee, in its sole discretion, may adjust any evaluation of performance under a Performance Goal to take into account any of the following events that occurs during a performance period: (i) asset write-downs, (ii) litigation or claim judgments or settlements, (iii) the effect of changes in tax law, accounting principles or other such laws or provisions affecting reported results, (iv) accruals for reorganization and restructuring programs, and (v) any extraordinary non-recurring items as described in Accounting Principles Board Opinion No. 30 (or in any replacement thereof) and/or in management's discussion and analysis of financial condition and results of operations appearing in the Company's annual report to stockholders for the applicable year. A Performance Goal may include a threshold level of performance below which no payment or vesting may occur, levels of performance at which specified payments or specified vesting will occur, and a maximum level of performance above which no additional payment or vesting will occur. Each of the Performance Goals shall be determined, where applicable and except as provided above, in accordance with generally accepted accounting principles. Prior to the payment of any compensation under an Award intended to qualify as "performance-based compensation" under Section 162(m) of the Code, the Committee shall certify the extent to which any Performance Goal and any other material terms under such Award have been satisfied (other than in cases where such relate solely to the increase in the value of Stock).

(v) "Performance Period" means the time period during which the Performance Goal must be met in connection with a Performance-Based Compensation Award. Such time period shall be set by the Committee.

(w) "Period of Restriction" means the period during which Restricted Stock or Restricted Units are restricted as provided in the Plan.

(x) "Plan" means the Massey Energy Company 2006 Stock and Incentive Compensation Plan, as herein described and as hereafter from time to time amended.

(y) "Restricted Stock" means an Award of Stock granted to a Participant pursuant to Section 6.7 or 7.6 or Article VIII herein which is subject to restrictions and forfeiture until the designated conditions for the lapse of the restrictions are satisfied.

(z) "Restricted Unit" means an Award, designated as a Restricted Unit, which is a bookkeeping entry granted to a Participant pursuant to Article IX herein and valued by reference

to the Fair Market Value of a Share, which is subject to restrictions and forfeiture until the designated conditions for the lapse of the restrictions are satisfied. A Restricted Unit is sometimes referred to as a “Restricted Unit” or a “restricted stock unit.” Restricted Units represent an unfunded and unsecured obligation of the Company, except as otherwise provided for by the Committee.

(aa) “Stock” or “Shares” means the common stock of the Company.

(bb) “Stock Appreciation Right” or “SAR” means an Award, designated as a stock appreciation right, granted to a Participant pursuant to Article VII herein.

(cc) “Subsidiary” means any subsidiary corporation of the Company within the meaning of Section 424(f) of the Code (“Section 424(f) Corporation”) and any partnership, limited liability company or joint venture in which either the Company or Section 424(f) Corporation is at least a fifty percent (50%) equity participant.

(dd) “Unrestricted Stock Award” means an award of Stock granted to a Participant pursuant to Article X herein.

ARTICLE III Administration

3.1 *Administration of the Plan by the Committee.* The Plan shall be administered by the Committee which shall have all powers necessary or desirable for such administration. The express grant in the Plan of any specific power to the Committee shall not be construed as limiting any power or authority of the Committee. In addition to any other powers and, subject to the provisions of the Plan, the Committee shall have the following specific powers: (i) to determine the terms and conditions upon which the Awards may be made and exercised; (ii) to determine all terms and conditions of each Agreement, which need not be identical; (iii) to construe and interpret the Agreements and the Plan; (iv) to establish, amend or waive rules or regulations for the Plan’s administration; (v) to accelerate the exercisability of any Award, the end of a Performance Period or termination of any Period of Restriction or other restrictions imposed under the Plan; and (vi) to make all other determinations and take all other actions necessary or advisable for the administration of the Plan.

For purposes of determining the applicability of Section 422 of the Code (relating to Incentive Stock Options), or in the event that the terms of any Award provide that it may be exercised only during employment or service or within a specified period of time after termination of employment or service, the Committee may decide to what extent leaves of absence for governmental or military service, illness, temporary disability, or other reasons shall not be deemed interruptions of employment or service or continuous employment or service.

Subject to limitations under applicable law, the Committee is authorized in its discretion to issue Awards and/or accept notices, elections, consents and/or other forms or communications by Participants by electronic or similar means, including, without limitation, transmissions through

e-mail, voice mail, recorded messages on electronic telephone systems, and other permissible methods, on such basis and for such purposes as it determines from time to time.

A majority of the entire Committee shall constitute a quorum and the action of a majority of the members present at any meeting, 24 hours notice having been given or waived, at which a quorum is present (in person or as otherwise permitted by applicable law), or acts approved in writing by all of the Committee without a meeting, shall be deemed the action of the Committee.

The Committee may designate the Secretary of the Company or other Company employees to assist the Committee in the administration of the Plan, and may grant authority to such persons to execute agreements evidencing Awards made under this Plan or other documents entered into under the Plan on behalf of the Committee or the Company.

3.2 *Selection of Participants.* The Committee shall have the authority to grant Awards under the Plan, from time to time, to such Members, Non-Employee Service Providers and/or Non-Employee Directors as may be selected by it. Each Award shall be evidenced by an Agreement.

3.3 *Decisions Binding.* All determinations and decisions made by the Committee pursuant to the provisions of the Plan shall be final, conclusive and binding.

3.4 *Requirements of Rule 16b-3 of the Exchange Act and Section 162(m) of the Code.* Notwithstanding any other provision of the Plan, the Board or the Committee may impose such conditions on any Award, and amend the Plan in any such respects, as may be required to satisfy the requirements of Rule 16b-3 of the Exchange Act, as amended (or any successor or similar rule).

Any provision of the Plan to the contrary notwithstanding, and except to the extent that the Committee determines otherwise: (i) transactions by and with respect to officers and directors of the Company who are subject to Section 16(b) of the Exchange Act (hereafter, "Section 16 Persons") shall comply with any applicable conditions of Rule 16b-3 of the Exchange Act; (ii) transactions with respect to persons whose remuneration is subject to the provisions of Section 162(m) of the Code shall conform to the requirements of Section 162(m)(4)(C) of the Code; and (iii) every provision of the Plan shall be administered, interpreted, and construed to carry out the foregoing provisions of this sentence.

Notwithstanding any provision of the Plan to the contrary, the Plan is intended to give the Committee the authority to grant Awards that qualify as performance-based compensation under Section 162(m)(4)(C) of the Code as well as Awards that do not so qualify. Every provision of the Plan shall be administered, interpreted, and construed to carry out such intention, and any provision that cannot be so administered, interpreted, and construed shall to that extent be disregarded; and any provision of the Plan that would prevent an Award that the Committee intends to qualify as performance-based compensation under Section 162(m)(4)(C) of the Code from so qualifying shall be administered, interpreted, and construed to carry out such intention,

and any provision that cannot be so administered, interpreted, and construed shall to that extent be disregarded.

3.5 *Indemnification of Committee.* In addition to such other rights of indemnification as they may have as directors or as members of the Committee, the members of the Committee shall be indemnified by the Company against reasonable expenses, including attorneys' fees, actually and reasonably incurred in connection with the defense of any action, suit or proceeding, or in connection with any appeal therein, to which they or any of them may be a party by reason of any action taken or failure to act under or in connection with the Plan or any Award granted or made hereunder, and against all amounts reasonably paid by them in settlement thereof or paid by them in satisfaction of a judgment in any such action, suit or proceeding, if such members acted in good faith and in a manner which they believed to be in, and not opposed to, the best interests of the Company and its Subsidiaries.

ARTICLE IV

Stock Subject to the Plan

4.1 *Number of Shares Authorized for Issuance during Term of the Plan.* Subject to adjustment as provided in Section 4.4 herein and to the next paragraph of this Section, the maximum aggregate number (the "Maximum Aggregate Number") of Shares that may be issued pursuant to Awards made under the Plan during the term of the Plan stated in Section 1.3 shall not exceed the sum of (i) 3,500,000 and (ii) that number of Shares that (A) are represented by restricted stock or unexercised vested or unvested stock options which previously have been granted and are outstanding under the Massey Energy Company 1988 Executive Stock Plan, the Massey Energy Company Stock Plan for Non-Employee Directors, the Massey Energy Company 1996 Executive Stock Plan, the Massey Energy Company 1997 Restricted Stock Plan for Non-Employee Directors, and the Massey Energy Company 1999 Executive Performance Incentive Plan as of the Effective Date and (B) expire or otherwise lapse, are terminated or forfeited, are settled in cash, or are withheld or delivered to the Company for tax purposes at any time after the Effective Date. No awards shall be granted under the Massey Energy Company 1988 Executive Stock Plan, Massey Energy Company Stock Plan for Non-Employee Directors, Massey Energy Company 1996 Executive Stock Plan, Massey Energy Company 1997 Restricted Stock Plan for Non-Employee Directors, and the Massey Energy Company 1999 Executive Performance Incentive Plan on or after the Effective Date.

Except as provided in Sections 4.2 and 4.3 herein, only Shares actually issued in connection with the exercise of, or as other payment for Awards, under the Plan shall reduce the number of Shares available for future Awards under the Plan. Awards settled in cash shall not count against the Maximum Aggregate Number.

Stock that may be issued under the Plan may either be Shares reacquired by the Company, including Shares purchased in the open market, authorized but unissued Shares, Shares held in treasury, or Shares held in a grantor trust created by the Company. Such Shares, however, shall count against the Maximum Aggregate Number, except as provided in the foregoing paragraph.

The Company, during the term of the Plan and thereafter during the term of any outstanding Award which may be settled in Stock, shall reserve and keep available a number of Shares sufficient to satisfy the requirements of the Plan.

4.2 *Lapsed Awards or Forfeited Shares.* If any Award granted under the Plan terminates, expires, or lapses for any reason other than by virtue of exercise of the Award, or if Shares issued pursuant to Awards are forfeited, any Stock subject to such Award again shall be available for the grant of an Award under the Plan.

4.3 *Shares Used as Payment of Exercise Price or for Taxes.* In the event a Participant pays the Option Price for Shares pursuant to the exercise of an Option with previously acquired Shares, the number of Shares available for future Awards under the Plan shall be reduced only by the net number of new Shares issued upon the exercise of the Option. In addition, in determining the number of shares of Stock available for Awards, if Stock has been delivered or exchanged by, or withheld from, a Participant as full or partial payment to the Company for payment of withholding taxes, or if the number of shares of Stock otherwise deliverable by the Company has been reduced for payment of withholding taxes, the number of shares of Stock exchanged by or withheld from a Participant as payment in connection with the withholding tax or so reduced by the Company shall again be available for the grant of an Award under the Plan.

4.4 *Capital Adjustments.* If the outstanding securities of the class then subject to the Plan are increased, decreased or exchanged for or converted into cash, property or a different number or kind of shares or securities, or if cash, property or shares or securities are distributed in respect of such outstanding securities, in either case as a result of a reorganization, merger, consolidation, recapitalization, restructuring, reclassification, dividend (other than a regular, quarterly cash dividend) or other distribution, stock split, reverse stock split, spin-off or the like, or if substantially all of the property and assets of the Company are sold, then (i) the Committee shall make appropriate and proportionate adjustments in the number and class of Shares subject to, or cash or other property that may be acquired pursuant to, each outstanding Award and the Option Price therefor in such manner as the Committee shall determine in order to retain the economic value or opportunity provided immediately prior to the transaction for which the adjustment is made and (ii) in all cases, unless the terms of such transaction shall provide otherwise, the Committee may make appropriate and proportionate adjustments in the maximum number and kind of shares or other securities, and the annual limits on and aggregate number of Shares for which Awards, that may be issued pursuant to such Awards thereafter granted under the Plan. Notwithstanding anything to contrary in the foregoing, any such adjustment shall be made in such a manner that will not affect the status of any Award intended to be excepted from treatment as nonqualified deferred compensation under Section 409A of the Code, qualify as an ISO under Section 422 of the Code or as “performance based compensation” under Section 162(m) of the Code. No fractional interests will be issued under the Plan resulting from any such adjustments.

ARTICLE V
Eligibility

Persons eligible to participate in the Plan are (i) Members, (ii) Non-Employee Service Providers and (iii) Non-Employee Directors. Multiple grants of Awards under the Plan may be made in any calendar year to one or more Participants.

ARTICLE VI
Stock Options

6.1 *Grant of Options.* Subject to the terms and conditions of the Plan, the Committee, at any time and from time to time, may grant Options under the Plan (with one Option representing one Share) to Members, Non-Employee Service Providers and Non-Employee Directors in such amounts as it shall determine; provided, however, that (i) Non-Employee Service Providers and Non-Employee Directors may only be granted Non-Qualified Stock Options, (ii) no Participant may be granted Options in any calendar year for more than 400,000 Shares, provided that only for purposes of qualifying for the performance-based compensation exception under Section 162(m) of the Code, Options which are awarded and then cancelled and Options for which the exercise price is lowered both continue to count against this limit, and (iii) the aggregate Fair Market Value (determined at the time the Award is made) of Shares with respect to which any Participant may first exercise ISOs granted under the Plan during any calendar year may not exceed \$100,000 or such amount as shall be specified in Section 422 of the Code and rules and regulations thereunder.

6.2 *Option Agreement.* Each Option grant shall be evidenced by an Agreement that shall specify the type of Option granted, the Option Price (as hereinafter defined), the duration of the Option, the number of Shares to which the Option pertains, any conditions imposed upon the exercisability of Options in the event of retirement, death, disability or other termination of employment or service, and such other provisions as the Committee shall determine. The Agreement shall specify whether the Option is intended to be an Incentive Stock Option within the meaning of Section 422 of the Code, or a Non-Qualified Stock Option not intended to be an Incentive Stock Option within the meaning of Section 422 of the Code; provided, however, that if an Option is intended to be an Incentive Stock Option but fails to be such for any reason, it shall continue in full force and effect as a Non-Qualified Stock Option. If an Option is intended to be a Performance-Based Compensation Award, the terms and conditions thereof, including the Performance Goal and Performance Period, shall be set forth in an Agreement or in a subplan of the Plan which is incorporated by reference into an Agreement and the requirements to satisfy or achieve the Performance Goal as so provided therein shall be considered to be restrictions under the Plan.

6.3 *Option Price.* The Option Price of an Option shall be determined by the Committee subject to the following limitations. The Option Price shall not be less than 100% of the Fair Market Value of such Stock on the Grant Date. In addition, an ISO granted to a Member who, at the time of grant, owns (within the meaning of Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the

Company, shall have an Option Price which is at least equal to 110% of the Fair Market Value of such Stock on the Grant Date.

6.4 *Duration of Options.* Each Option shall expire at such time as the Committee shall determine; provided, however, that no Option shall be exercisable after the expiration of ten years from its Award Date. In addition, an ISO granted to a Member who, at the time of grant, owns (within the meaning of Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company, shall not be exercisable after the expiration of five years from its Grant Date.

6.5 *Exercisability.* Options granted under the Plan shall be exercisable at such times and be subject to such restrictions and conditions as the Committee shall determine, which need not be the same for all Participants.

6.6 *Method of Exercise.* Options shall be exercised by the delivery of a written notice to the Company in the form prescribed by the Committee setting forth the number of Shares with respect to which the Option is to be exercised, accompanied by full payment for the Shares and payment of (or an arrangement satisfactory to the Company for the Participant to pay) any tax withholding required in connection with the Option exercise. The Option Price shall be payable to the Company in full either in cash, by delivery of Shares of Stock valued at Fair Market Value at the time of exercise, or by a combination of the foregoing, except as otherwise provided below.

To the extent permitted under the applicable laws and regulations, at the request of the Participant and with the consent of the Committee, the Company agrees to cooperate in a “cashless exercise” of an Option. The cashless exercise shall be effected by the Participant delivering to a securities broker, selected or approved by the Committee, instructions to exercise all or part of the Option, including instructions to sell a sufficient number of shares of Stock to cover the costs and expenses associated therewith.

As soon as practicable, after receipt of written notice and payment of the Option Price and completion of payment of (or an arrangement satisfactory to the Company for the Participant to pay) any tax withholding required in connection with the Option exercise, the Company shall cause the appropriate number of Shares to be issued in the Participant’s name, which issuance shall be effected in book entry or electronic form, provided that issuance and delivery in certificated form shall occur if the Participant so requests in writing or the Committee so directs.

6.7 *Restrictions on Stock Transferability.* The Committee may impose such restrictions on any Shares acquired pursuant to the exercise of an Option under the Plan as it may deem advisable, including, without limitation, restrictions under applicable Federal securities law, under the requirements of the New York Stock Exchange or any stock exchange upon which such Shares are then listed and under any blue sky or state securities laws applicable to such Shares. In the event the Committee so provides in an Agreement pertaining to an Option, Stock delivered on exercise of the Option may be designated as Restricted Stock or Stock subject to a

buyback right by the Company in the amount of, or based on, the Option Price therefor or otherwise in the event the Participant does not complete a specified service period after exercise.

ARTICLE VII

Stock Appreciation Rights

7.1 *Grant of Stock Appreciation Rights.* Subject to the terms and conditions of the Plan, the Committee, at any time and from time to time, may grant Stock Appreciation Rights under the Plan to Members and Non-Employee Service Providers in such amounts as it shall determine; provided, however, that no Participant may be granted more than 400,000 SARs in any calendar year; and provided, further, that only for purposes of qualifying for the performance-based compensation exception under Section 162(m) of the Code, SARs for which the Base Value provided in Section 7.5 against which the stock appreciation is determined is lowered continue to count against this limit.

7.2 *SAR Agreement.* Each SAR grant shall be evidenced by an Agreement that shall specify the Base Value (as defined in Section 7.5), the duration of the SAR, the number of Shares to which the SAR pertains, any conditions imposed upon the exercisability of the SAR in the event of retirement, death, disability or other termination of employment or service, and such other provisions as the Committee shall determine. SARs granted under the Plan shall be exercisable at such times and be subject to such restrictions and conditions as the Committee shall determine, which need not be the same for all Participants consistent with the Plan. If a SAR Grant is intended to be a Performance-Based Compensation Award, the Performance Goal and Performance Period shall be set forth in an Agreement or in a subplan of the Plan which is incorporated by reference into an Agreement and the requirements to satisfy or achieve the Performance Goal as so provided therein shall be considered to be restrictions under the Plan.

7.3 *Exercise of SARs.* SARs may be exercised with respect to all or part of the Shares upon whatever terms and conditions the Committee, in its sole discretion, imposes upon such SARs. SARs shall be exercised by delivery to the Committee of a notice of exercise in the form prescribed by the Committee.

7.4 *Other Conditions Applicable to SARs.* In no event shall the term of any SAR granted under the Plan exceed ten years from the Grant Date. A SAR may be exercised only when the Fair Market Value of a Share exceeds the Base Value (as defined in Section 7.5).

7.5 *Payment after Exercise of SARs.* Subject to the provisions of the Agreement, upon the exercise of SARs, the Participant is entitled to receive, without any payment to the Company (other than applicable tax withholding when due), an amount equal (the "SAR Value") to the product of multiplying (i) the number of Shares with respect to which the SAR is exercised by (ii) an amount equal to the excess of (A) the Fair Market Value per Share on the date of exercise of the SAR over (B) the "Base Value" of the SAR designated in the Agreement (which "Base Value" shall be the Fair Market Value per Share on the Award Date or any amount greater than such Fair Market Value stated as the Base Value in the Agreement). The Agreement may provide for payment of the SAR Value at the time of exercise or, on an elective or non-elective

basis, for payment of the SAR Value at a later date, adjusted (if so provided in the Agreement) from the date of exercise based on an interest, dividend equivalent, earnings, or other basis (including deemed investment of the SAR Value in Shares) set out in the Agreement (the “adjusted SAR Value”). The Committee is expressly authorized to grant SARs which are deferred compensation covered by Section 409A of the Code, as well as SARs which are not deferred compensation covered by Section 409A of the Code.

Payment of the SAR Value or adjusted SAR Value to the Participant shall be made (i) in Shares, valued at the Fair Market Value on the date of exercise in the case of an immediate payment after exercise or at the Fair Market Value on the date of settlement in the event of an elective or non-elective delayed payment, (ii) in cash or (iii) in a combination thereof as determined or permitted by the Committee, either at the time of the Award or, unless otherwise provided in the applicable Agreement, thereafter, and as provided in the Agreement. Any payment in Shares shall be effected in book entry or electronic form, provided that issuance and delivery in certificated form shall occur if the Participant so requests in writing or the Committee so directs.

7.6 *Restrictions on Stock Transferability.* The Committee may impose such restrictions on any Shares acquired pursuant to the exercise of a SAR under the Plan as it may deem advisable, including, without limitation, restrictions under applicable Federal securities law, under the requirements of the New York Stock Exchange or any stock exchange upon which such Shares are then listed and under any blue sky or state securities laws applicable to such Shares. In the event the Committee so provides in an Agreement pertaining to a SAR, Stock delivered on exercise of the SAR may be designated as Restricted Stock or Stock subject to a buyback right by the Company in the amount of, or based on, the Base Value (as defined in Section 7.5) therefor or otherwise in the event the Participant does not complete a specified service period after exercise.

ARTICLE VIII

Restricted Stock

8.1 *Grant of Restricted Stock.* Subject to the terms and conditions of the Plan, the Committee, at any time and from time to time, may grant Shares of Restricted Stock under the Plan to such Members, Non-Employee Service Providers and Non-Employee Directors and in such amounts as it shall determine; provided, however, that no Participant may be granted more than 200,000 Shares of Restricted Stock in any calendar year. Participants receiving Restricted Stock Awards are not required to pay the Company therefor (except for applicable tax withholding when due) other than the rendering of services. As determined by the Committee, Shares of Restricted Stock may be issued in book entry or electronic form or in certificated form.

Notwithstanding anything to the contrary in the foregoing, the Committee is expressly authorized to make Awards of Restricted Stock based on a Member’s, Non-Employee Service Provider’s or Non-Employee Director’s acquisition and/or holding of Stock (including for this purpose any deemed investment in Stock) in his individual capacity or under any nonqualified

deferred compensation plan or tax qualified plan (if permissible under applicable qualification rules of the Code) maintained by the Company or a Subsidiary.

8.2 *Restricted Stock Agreement.* Each Restricted Stock Award shall be evidenced by an Agreement that shall specify the Period of Restriction, the number of Shares of Restricted Stock granted, and the applicable restrictions (whether service-based restrictions, with or without performance acceleration, and/or performance-based restrictions) and such other provisions as the Committee shall determine. If an Award of Restricted Stock is intended to be a Performance-Based Compensation Award, the terms and conditions of such Award, including the Performance Goal and Performance Period, which shall be no less than one year, shall be set forth in an Agreement or in a subplan of the Plan which is incorporated by reference into an Agreement and the requirements to satisfy or achieve the Performance Goal as so provided therein shall be considered to be restrictions under the Plan. If vesting of an Award of Restricted Stock is intended to be service-based (whether solely service-based or service-based with performance acceleration), the Award's service-based vesting period shall be at least three years, though the Award's service-based vesting may occur ratably over the course of such period (e.g. a three year service-based award may vest one-third on each of the first, second and third anniversaries of the Grant Date). Unless otherwise determined by the Committee, custody of Shares of Restricted Stock maintained in certificated form shall be retained by the Company until the termination of the restrictions pertaining thereto.

8.3 *Other Restrictions.* The Committee may impose such other restrictions under applicable Federal or state securities laws as it may deem advisable, and may legend the certificates representing Restricted Stock to give appropriate notice of such restrictions.

8.4 *Certificate Legend.* In addition to any legends placed on certificates pursuant to Section 8.3 herein, each certificate representing Shares of Restricted Stock issued pursuant to the Plan shall bear the following legend:

"The sale or other transfer of the shares of Massey Energy Company stock represented by this certificate, whether voluntary, involuntary, or by operation of law, is subject to certain restrictions on transfer set forth in the Massey Energy Company 2006 Stock and Incentive Compensation Plan, in the rules and administrative procedures adopted pursuant to such Plan, and in an associated Restricted Stock Agreement. A copy of the Plan, such rules and procedures, and the applicable Restricted Stock Agreement may be obtained from the Secretary of Massey Energy Company."

8.5 *Removal of Restrictions.* Except as otherwise provided in this Article, Shares of Restricted Stock covered by each Award of, or payable in, Restricted Stock made under the Plan shall become freely transferable by the Participant after the last day of the Period of Restriction and, where applicable, after a determination of the satisfaction or achievement on any applicable Performance Goal by the Committee. The Shares of Stock shall remain in book entry or electronic form, unless and until the Participant requests in writing, or the Committee directs, for certificates evidencing the Shares to be issued. Such Shares, having been released from the restrictions, shall not bear the restrictive legends required by Section 8.3 or 8.4.

8.6 *Voting Rights.* Unless otherwise provided in the Agreement, during the Period of Restriction, Participants holding Shares of Restricted Stock granted hereunder may exercise voting rights with respect to those Shares.

8.7 *Dividends and Other Distributions.* Unless otherwise provided in the Agreement (which may or may not provide for the accumulation and payment of dividends and other distributions made in cash or property other than Shares until the Shares of Restricted Stock to which the dividends and other distributions relates vest), during the Period of Restriction, Participants entitled to or holding Shares of Restricted Stock granted hereunder shall be entitled to receive all dividends and other distributions paid in cash or property other than Shares with respect to those Shares of Restricted Stock. If any dividends or distributions are paid in Shares, such Shares shall be subject to the same restrictions on transferability and the same rules for vesting, forfeiture and custody as the Shares of Restricted Stock with respect to which they were distributed. If provided in the Agreement and if a Participant timely elects in accordance with the requirements for compliance with the nonqualified deferred compensation provisions of Section 409A of the Code, Participants may be given the right to elect to defer the receipt of such dividends and other distributions until the Participant ceases employment or service with the Company and its Subsidiaries, until a specified time or until the Shares of Restricted Stock to which the dividends and other distributions relate vest.

ARTICLE IX

Restricted Units

9.1 *Grant of Restricted Units.* Subject to the terms and conditions of the Plan, the Committee, at any time and from time to time, may grant Restricted Units under the Plan (with one Restricted Unit representing one Share) to such Members, Non-Employee Service Providers and Non-Employee Directors and in such amounts as it shall determine; provided, however, that no Participant may be granted more than 200,000 Restricted Units in any calendar year. Participants receiving Restricted Unit Awards are not required to pay the Company therefor (except for applicable tax withholding when due) other than the rendering of services.

Notwithstanding anything to the contrary in the foregoing, the Committee is expressly authorized to make Awards of Restricted Units based on a Member's, Non-Employee Service Provider's or Non-Employee Director's acquisition and/or holding of Stock (including for this purpose any deemed investment in Stock) in his individual capacity or under any nonqualified deferred compensation plan or tax qualified plan (if permissible under applicable qualification rules of the Code) maintained by the Company or a Subsidiary.

9.2 *Restricted Unit Agreement.* Each Restricted Unit Award shall be evidenced by an Agreement that shall specify the Period of Restriction, the number of Restricted Units granted, and the applicable restrictions (whether service-based restrictions, with or without performance acceleration, and/or performance-based restrictions) and such other provisions as the Committee shall determine. If an Award of Restricted Units is intended to be a Performance-Based Compensation Award, the terms and conditions of such Award, including the Performance Goal

and Performance Period, which shall be no less than one year, shall be set forth in an Agreement or in a subplan of the Plan which is incorporated by reference into an Agreement and the requirements to satisfy or achieve the Performance Goal as so provided therein shall be considered to be restrictions under the Plan. If vesting of an Award of Restricted Units is intended to be service-based (whether solely service-based or service-based with performance acceleration), the Award's service-based vesting period shall be at least three years, though vesting may occur ratably over the course of such period (e.g. a three year service-based award may vest one-third on each of the first, second and third anniversaries of the Grant Date).

9.3 *Dividends and Other Distributions.* Unless otherwise provided in the Agreement (which may or may not provide for the current payment, or for the accumulation subject to the same restrictions, vesting, forfeiture and payment as the Restricted Units to which they are attributable, of dividends and other distributions made in cash or property other than Shares), during the Period of Restriction, Participants holding Restricted Units shall have no rights to dividends and other distributions made in cash or property other than Shares which would have been paid with respect to the Shares represented by those Restricted Units if such Shares were outstanding. Unless otherwise provided in the Agreement, if any deemed dividends or other distributions would be paid in Shares, such Shares shall be considered to increase the Participant's Restricted Units with respect to which they were declared based on one Share equaling one Restricted Unit. In addition, unless otherwise provided in the Agreement, during the Period of Restriction, any such deemed dividends and other distributions for which rights are provided but which are not paid currently shall be deemed converted to additional Restricted Units based on the Fair Market Value of a Share on the date of payment or distribution of the deemed dividend or distribution. If provided in the Agreement and if a Participant timely elects in accordance with the requirements for compliance with the nonqualified deferred compensation provisions of Section 409A of the Code, Participants may be given the right to elect to receive or defer the payment of any such deemed dividends and other distributions until the Participant ceases employment or service with the Company and its Subsidiaries, until a specified time or until the Restricted Units to which the dividends and other distributions relate vest.

9.4 *Payment after Lapse of Restrictions.* Subject to the provisions of the Agreement, upon the lapse of restrictions with respect to a Restricted Unit, the Participant is entitled to receive, without any payment to the Company (other than applicable tax withholding when due), an amount equal to the product of multiplying (i) the number of Shares with respect to which the restrictions lapse by (ii) the Fair Market Value per Share on the date the restrictions lapse (such amount, the "RU Value").

The Agreement may provide for payment of the RU Value at the time of vesting or, on an elective or non-elective basis, for payment of the RU Value at a later date, adjusted (if so provided in the Agreement) from the date of exercise based on an interest, dividend equivalent, earnings, or other basis (including deemed investment of the RU Value in Shares) set out in the Agreement (the "adjusted RU Value"). The Committee is expressly authorized to grant Restricted Units which are deferred compensation covered by Section 409A of the Code, as well as Restricted Units which are not deferred compensation covered by Section 409A of the Code.

Payment of the RU Value or adjusted RU Value to the Participant shall be made (i) in Shares, valued at the Fair Market Value on the date or dates the restrictions on the Award lapse in the case of an immediate payment after vesting or at the Fair Market Value on the date of settlement in the event of an elective or non-elective delayed payment, (ii) in cash or (iii) in a combination thereof as determined or permitted by the Committee, either at the time of the Award or, unless otherwise provided in the applicable Agreement, thereafter, and as provided in the Agreement. Any payment in Shares shall be effected in book entry or electronic form, provided that issuance and delivery in certificated form shall occur if the Participant so requests in writing or the Committee so directs.

ARTICLE X

Unrestricted Stock

Grant of Unrestricted Stock Awards. Subject to the terms and provisions of the Plan, the Committee, at any time and from time to time, may grant Unrestricted Stock Awards under the Plan to one or more Members and Non-Employee Service Providers in such amount or amounts as it shall determine; provided, however, that no Participant may be granted Unrestricted Stock Awards in any calendar year for more than 200,000 Shares and that the aggregate number of Shares that may be issued under the Plan as Unrestricted Stock Awards during the term of the Plan shall not exceed 5% of the Maximum Aggregate Number of Shares as determined in Section 4.1. Participants receiving Unrestricted Stock Awards are not required to pay the Company therefor (except for applicable tax withholding when due). Payment of a Unrestricted Stock Award shall be effected as soon as practicable after the Award Date in book entry or electronic form, provided that issuance and delivery in certificated form shall occur if the Participant so requests in writing or the Committee so directs.

Notwithstanding anything to the contrary in the foregoing, the Committee is expressly authorized to make Awards of Unrestricted Stock based on a Member's, Non-Employee Service Provider's or Non-Employee Director's acquisition and/or holding of Stock (including for this purpose any deemed investment in Stock) in his individual capacity or under any nonqualified deferred compensation plan or tax qualified plan (if permissible under applicable qualification rules of the Code) maintained by the Company or a Subsidiary.

ARTICLE XI

Incentive Awards

11.1 *Incentive Award.* Subject to the terms and conditions of the Plan, Incentive Awards may be granted to Members and Non-Employee Service Providers at any time and from time to time as shall be determined by the Committee. Each Incentive Award will confer upon the Participant the opportunity to earn a future payment tied to the level of achievement with respect to one or more performance criteria established for a performance period of not less than one year. Each Incentive Award shall contain provisions regarding (i) the target, minimum and maximum amounts payable to the Participant as an Incentive Award, (ii) the performance criteria and level of achievement versus these criteria which shall determine the amount of such payment, (iii) the period as to which performance shall be measured for establishing the amount

of any payment, (iv) the timing of any payment earned by virtue of performance, (v) restrictions on the alienation or transfer of the Incentive Award prior to actual payment, (vi) forfeiture provisions, (vii) immediate vesting provisions, and (viii) such further terms and conditions, in each case not inconsistent with the Plan as may be determined from time to time by the Committee. In establishing the provisions of Incentive Awards, the Committee may refer to categories of such Awards as parts of a subplan or a "Program" under the Plan, which names will not affect the applicability of this Plan. The maximum amount payable as an Incentive Award may be a multiple of the target amount payable, but the total of the maximum amount payable pursuant to that portion of an Incentive Award granted under this Plan for any fiscal year to any Participant that is intended to satisfy the requirements for "performance based compensation" under Section 162(m) of the Code and that portion of an Incentive Award granted under this Plan for any fiscal year that is not intended to satisfy the requirements for "performance based compensation" under Section 162(m) of the Code shall not exceed \$10,000,000.

11.2 *Performance Criteria.* The Committee shall establish the performance criteria and level of achievement versus the criteria which shall determine the target and the minimum and the maximum amounts payable under an Incentive Award, which criteria may be based on financial performance and/or personal performance evaluations. The Committee may specify the percentage of the target Incentive Award that is intended to satisfy the requirements for "performance-based compensation" under Section 162(m) of the Code. Notwithstanding anything to the contrary herein, the performance criteria for any portion of an Incentive Award that is intended by the Committee to satisfy the requirements for "performance-based compensation" under Section 162(m) of the Code shall be a measure based on one or more Performance Goals selected by the Committee and specified at the time required under Section 162(m) of the Code.

11.3 *Timing and Form of Payment.* The Committee shall determine the timing of payment of any Incentive Award. The Committee may provide for or, subject to such terms and conditions as the Committee may specify in the Incentive Award Agreement and subject to the requirements of Section 409A of the Code, may permit a Participant to elect for the payment of any Incentive Award to be deferred to a specified date or dates or to an event. Payment of the amount to which a Participant shall be entitled upon the settlement of an Incentive Award shall be made in cash, Shares, property or a combination thereof as determined by the Committee. Payment may be made in a lump sum or installments as determined or permitted by the Committee in the Incentive Award Agreement. Payment may be made (i) in Shares, valued at the Fair Market Value on the date of settlement, (ii) in cash or (iii) in a combination thereof as determined or permitted by the Committee, either at the time of the Award or, unless otherwise provided in the applicable Agreement, thereafter, and as provided in the Agreement. Any payment in Shares shall be effected in book entry or electronic form, provided that issuance and delivery in certificated form shall occur if the Participant so requests in writing or the Committee so directs.

11.4 *Restrictions on Stock Transferability.* The Committee may impose such restrictions on any Shares acquired in connection with the settlement of an Incentive Award under the Plan as it may deem advisable, including, without limitation, restrictions under

applicable Federal securities law, under the requirements of the New York Stock Exchange or any stock exchange upon which such Shares are then listed and under any blue sky or state securities laws applicable to such Shares. In the event the Committee so provides in an Agreement pertaining to Incentive Award, Stock delivered connection with the settlement of an Incentive Award may be designated as Restricted Stock or Stock subject to a buyback right by the Company on such basis as the Committee may provide in the event the Participant does not complete a specified service period after vesting in the Award.

11.5 *Discretionary Adjustments.* Notwithstanding satisfaction of any performance goals, the amount paid under an Incentive Award on account of either financial performance or personal performance evaluations may be reduced by the Committee on the basis of such further considerations as the Committee in its sole discretion shall determine.

ARTICLE XII

Change in Control

In the event of a Change in Control of the Company, the Committee, as constituted before such Change in Control, in its sole discretion may, as to any outstanding Award, either at the time the Award is made or any time thereafter, take any one or more of the following actions: (i) provide for the acceleration of any time periods relating to the exercise or realization of any such Award so that such Award may be exercised or realized in full on or before a date initially fixed by the Committee; (ii) provide for the purchase or settlement of any such Award by the Company, with or without a Participant's request, for an amount of cash equal to the amount which could have been obtained upon the exercise of such Award or realization of such Participant's rights had such Award been currently exercisable or payable; (iii) make such adjustment to any such Award then outstanding as the Committee deems appropriate to reflect such Change in Control; or (iv) cause any such Award then outstanding to be assumed, or new rights substituted therefor, by the acquiring or surviving corporation in such Change in Control.

ARTICLE XIII

Modification, Extension and Renewal of Awards

Subject to the terms and conditions and within the limitations of the Plan, the Committee may modify, extend or renew outstanding Awards and may modify the terms of an outstanding Agreement, may accept the surrender of outstanding Awards granted under the Plan or outstanding awards granted under any other equity compensation plan of the Company and authorize the granting of new Awards pursuant to the Plan in substitution therefor so long as the new or substituted awards are not of a different type (with Options and SARs being one type and thus not eligible to be exchanged for any Award other than Options or SARs), and otherwise the new Awards may specify a longer term than the surrendered Awards or awards, may provide for more rapid vesting and exercisability than the surrendered Awards or awards, and may contain any other provisions that are authorized by the Plan. Notwithstanding the foregoing, however, no modification of an Award, shall, without the consent of the Participant, adversely affect the rights or obligations of the Participant.

Notwithstanding anything to the contrary in the foregoing other than an adjustment pursuant to Section 4.4 herein, except in connection with a corporate transaction involving the Company (including, without limitation, any stock dividend, stock split, extraordinary cash dividend, recapitalization, reorganization, merger, consolidation, split-up, spin-off, combination, or exchange of shares), the terms of outstanding awards may not be amended to reduce the exercise price or Base Value of outstanding Options or SARs or cancel outstanding Options or SARs in exchange for cash, other Awards or awards or Options or SARs with an exercise price or Base Value that is less than exercise price or Base Value of the original Options or SARs without shareholder approval.

ARTICLE XIV

Amendment, Modification and Termination of the Plan

14.1 *Amendment, Modification and Termination.* At any time and from time to time, the Board may terminate, amend, or modify the Plan. Such amendment or modification may be without shareholder approval except to the extent that such approval is required by the Code, pursuant to the rules under Section 16 of the Exchange Act, by any national securities exchange or system on which the Stock is then listed or reported, by any regulatory body having jurisdiction with respect thereto or under any other applicable laws, rules or regulations. Notwithstanding the foregoing, the Plan shall not be amended to permit the actions prohibited by the last paragraph of Article XIII without shareholder approval.

14.2 *Awards Previously Granted.* No termination, amendment or modification of the Plan herein shall in any manner adversely affect any Award theretofore granted under the Plan, without the written consent of the Participant.

ARTICLE XV

Withholding

15.1 *Tax Withholding.* The Company shall have the power and the right to deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy Federal, State and local taxes (including the Participant's FICA obligation) required by law to be withheld with respect to any grant, exercise, or payment made under or as a result of the Plan or any Agreement.

15.2 *Stock Withholding.* With respect to withholding required upon the exercise of Non-Qualified Stock Options, or upon the lapse of restrictions on Restricted Stock, or upon the occurrence of any other taxable event with respect to any Award, Participants may elect, subject to the approval of the Committee, or the Committee may require Participants to satisfy the withholding requirement, in whole or in part, by having the Company withhold Shares of Stock having a Fair Market Value equal to the amount required to be withheld. The value of the Shares to be withheld shall be based on the Fair Market Value of the Shares on the date that the amount of tax to be withheld is to be determined. All elections by Participants shall be irrevocable and be

made in writing and in such manner as determined by the Committee in advance of the day that the transaction becomes taxable.

ARTICLE XVI

Successors

All obligations of the Company under the Plan, with respect to Awards granted hereunder, shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation or otherwise, of all or substantially all of the business and/or assets of the Company.

ARTICLE XVII

General

17.1 *Requirements of Law.* The granting of Awards and the issuance of Shares of Stock under the Plan shall be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or self-regulatory organizations as may be required.

17.2 *Effect of the Plan.* The establishment of the Plan shall not confer upon any Member, Non-Employee Service Provider or Non-Employee Director any legal or equitable right against the Company, a Subsidiary or the Committee, except as expressly provided in the Plan. The Plan does not constitute an inducement or consideration for the employment or service of any Member, Non-Employee Service Provider or Non-Employee Director, nor is it a contract between the Company or any of its Subsidiaries and any Member, Non-Employee Service Provider or Non-Employee Director. Participation in the Plan shall not give any Member, Non-Employee Service Provider or Non-Employee Director any right to be retained in the service of the Company or any of its Subsidiaries. Except as may be otherwise expressly provide in the Plan or in an Agreement, no Member, Non-Employee Service Provider or Non-Employee Director who receives an Award shall have rights as a shareholder of the Company prior to the date Shares are issued to the Participant pursuant to the Plan, regardless of whether such Shares are held in book entry or electronic form or in certificated form.

17.3 *Creditors.* The interests of any Participant under the Plan or any Agreement are not subject to the claims of creditors and may not, in any way, be assigned, alienated or encumbered.

17.4 *Governing Law.* The Plan, and all Agreements hereunder, shall be governed, construed and administered in accordance with and governed by the laws of the State of Delaware and applicable federal law. The Committee may provide that any dispute as to any Award shall be presented and determined in such forum as the Committee may specify, including through binding arbitration. Any reference in this Plan or in an Agreement evidencing any Award to a provision of law or to a rule or regulation shall be deemed to include any successor law, rule or regulation of similar effect or applicability.

17.5 *Conflicts between the Plan and an Agreement.* In the event of a conflict between the Plan and an Agreement, the terms of the Plan shall control.

17.6 *Severability.* In the event any provision of the Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

17.7 *Unfunded Status of Plan.* The Plan is intended to constitute an “unfunded” plan for incentive and deferred compensation. With respect to any payments as to which a Participant has a fixed and vested interest but which are not yet made to a Participant by the Company, nothing contained herein shall give any such Participant any rights that are greater than those of a general unsecured creditor of the Company.

17.8 *Transferability.* Except for family transfers authorized in this Section (but only if the Agreement evidencing an Award, or an amendment thereto authorized by the Committee, expressly states that it is transferable as provided herein), no Award granted under the Plan, nor any interest in such Award, may be sold, assigned, conveyed, gifted, pledged, hypothecated or otherwise transferred in any manner, other than by will or the laws of descent and distribution, prior to the vesting or lapse of any and all restrictions applicable to any Shares issued under an Award. The Committee may in its sole discretion grant an Award (other than an ISO) or amend an outstanding Award (other than an ISO) to provide that the Award is transferable or assignable to a member or members of the Participant’s “immediate family,” as such term is defined under Exchange Act Rule 16a-1(e), or to a trust for the benefit solely of a member or members of the Participant’s immediate family, or to a partnership or other entity whose only owners are members of the Participant’s family; provided that following any such transfer or assignment the Award will remain subject to substantially the same terms applicable to the Award while held by the Participant, as modified as the Committee in its sole discretion shall determine appropriate, and the Participant shall execute an agreement agreeing to be bound by such terms.

17.9 *Termination of Employment or Service.* Unless otherwise provided in the Agreement pertaining to an Award, in the event that a Participant terminates his employment or service with the Company and its Subsidiaries for any reason, then the unvested portion of such Award shall automatically be forfeited to, and be acquired at no cost by, the Company. Unless otherwise provided in the Agreement pertaining to an Award, in determining cessation of employment or service, transfers between the Company and/or any Subsidiary shall be disregarded, and changes in status between that of a Member, a Non-Employee Service Provider and a Non-Employee Director shall be disregarded. The Committee may provide in an Agreement made under the Plan for vesting of Awards in connection with the termination of a Participant’s employment or service on such basis as it deems appropriate, including, without limitation, any provisions for vesting at death, disability, retirement or in connection with a Change in Control with or without the further consent of the Committee. The Agreements evidencing Awards may contain such provisions as the Committee may approve with reference to the effect of approved leaves of absence.

17.10 *Registration and Other Laws And Regulations.* The Plan, the grant and exercise of Awards hereunder, and the obligation of the Company to sell, issue or deliver Shares under such Awards, shall be subject to all applicable federal, state and foreign laws, rules and regulations and to such approvals by any governmental or regulatory agency as may be required. The Company shall not be required to register in a Participant's name or deliver any Shares prior to the completion of any registration or qualification of such Shares under any federal, state or foreign law or any ruling or regulation of any government body which the Committee shall, in its sole discretion, determine to be necessary or advisable.

No Option shall be exercisable unless a registration statement with respect to the Option is effective or the Company has determined that such registration is unnecessary. Unless the Awards and Shares covered by the Plan have been registered under the Securities Act of 1933, as amended, or the Company has determined that such registration is unnecessary, each person receiving an Award and/or Shares pursuant to any Award may be required by the Company to give a representation in writing that such person is acquiring such Shares for his or her own account for investment and not with a view to, or for sale in connection with, the distribution of any party thereof.

17.11 *Beneficiary Designation.* Each Participant shall have the right to notify the Committee in writing in a form acceptable to the Committee of any designation of a successor in interest (a "Beneficiary") to receive, if alive, benefits under the Plan or, if permitted by the Committee, with respect to any Award in the event of his death. Such designation may be changed from time to time by notice in writing to the Committee in a form acceptable to the Committee. If a Participant dies without having designated a Beneficiary, or if the Beneficiary so designated has predeceased the Participant or cannot be located by the Committee within one year after the date when the Committee commenced making a reasonable effort to locate such Beneficiary, then the executor or the administrator of the Participant's estate shall be deemed to be his Beneficiary. Any Beneficiary designation may include multiple, contingent or successive Beneficiaries and may specify the proportionate distribution to each Beneficiary. If a Beneficiary shall survive the Participant, but shall die before the entire benefit payable to such Beneficiary has been distributed, then absent any other provision by the Participant, the unpaid amount of such benefit shall be distributed to the estate of the deceased Beneficiary. If multiple Beneficiaries are designated, absent provisions by the Participant, those named or the survivors of them shall share equally any benefits payable under the Plan. Any Beneficiary, including the Participant's spouse, shall be entitled to disclaim any benefit otherwise payable to him under the Plan.

17.12 *Nonqualified Deferred Compensation Plan Omnibus Provision.* It is intended that any compensation, benefits or other remuneration which is provided pursuant to or in connection with the Plan which is considered to be nonqualified deferred compensation subject to Section 409A of the Code shall be provided and paid in a manner, and at such time and in such form, as complies with the applicable requirements of Section 409A of the Code to avoid the unfavorable tax consequences provided therein for non-compliance. For purposes of Sections 4.4, 6.5, 7.3, and 8.5 and Articles XII, XIII, and XIV, actions taken by the Board or the Committee, as applicable, shall be undertaken in a manner that either (a) will not negatively affect the status of any compensation, benefits or other remuneration intended to be excepted from treatment as

deferred compensation subject to Section 409A of the Code, or (b) will otherwise comply with Section 409A of the Code. The Committee is authorized to amend any Agreement and to amend or declare void any election by a Participant as may be determined by it to be necessary or appropriate to evidence or further evidence required compliance with Section 409A of the Code.

For purposes of this Plan and the Agreements, unless otherwise provided in the Agreement, where the Agreement provides nonqualified deferred compensation subject to Section 409A of the Code, termination of employment or service will be read to mean a “separation from service” within the meaning of Section 409A of the Code where it is reasonably anticipated that no further services would be performed after that date or that the level of bona fide services Participant would perform after that date (whether as an employee or independent contractor) would permanently decrease to no more than 20 percent of the average level of bona fide services performed over the immediately preceding thirty-six (36)-month period (or if less, the period of the Participant’s employment or service).

Where an Agreement provides nonqualified deferred compensation subject to Section 409A of the Code, payments or settlement in connection with a separation from service payment event will be delayed, to the extent applicable, until six months after the separation from service or, if earlier, the Participant’s death, if the Participant is a key employee of a publicly traded corporation under Section 409A(a)(2)(B)(i) of the Code (the “409A Deferral Period”). In the event such payments are otherwise due to be made in installments or periodically during the 409A Deferral Period, the payment or settlement which would otherwise have been made in the 409A Deferral Period shall be accumulated and paid in a lump sum as soon as the 409A Deferral Period ends, and the balance of the payments shall be made as otherwise scheduled.

Where an Agreement provides or may provide nonqualified deferred compensation subject to Section 409A of the Code, no elective deferral of payment or settlement of the Award to which the Agreement relates shall be permitted unless the election deferral provisions therefore are set out in the Agreement or in another written document authorized by the Committee in accordance with the election requirements of Section 409A of the Code.