

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

Chapter 11
Case No. 12-51502-659
(Jointly Administered)

Re: ECF Nos. 16, 89, 369 and 2817
Scheduled Hearing: February 26, 2013

**AMENDED FINAL ORDER AUTHORIZING THE DEBTORS
TO (i) ENTER INTO AND PERFORM UNDER COAL SALE
CONTRACTS IN THE ORDINARY COURSE OF BUSINESS AND
(ii) ESTABLISH CERTAIN PROCEDURES WITH RESPECT THERETO**

Upon the original motion (the “**Original Motion**”) of Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) for an interim order (the “**Interim Order**”) and final order (the “**Final Order**”) (i) authorizing the Debtors to enter into and perform under coal sale contracts in the ordinary course of business and (ii) establishing certain procedures with respect thereto, pursuant to sections 105(a) and 363 of the Bankruptcy Code, as more fully described in the Original Motion; and upon the motion (the “**Motion**”) ² to approve an amended final order authorizing the debtors to (i) enter into and perform under coal sale contracts in the ordinary course of business and (ii) establish certain procedures with respect thereto, as more fully described in the Motion; and upon consideration of the Declaration of Mark N. Schroeder, Patriot Coal Corporation’s Senior Vice President and Chief Financial Officer,

¹ The Debtors are the entities listed on Schedule 1 attached to the Motion. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

² Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Motion.

filed in support of the Debtors' first-day pleadings; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Bankruptcy Court for the Southern District of New York having entered (i) the Interim Order on July 16, 2012 and (ii) the Final Order on August 16, 2012; and due and proper notice of the Motion having been provided in accordance with the Order Establishing Certain Notice, Case Management and Administrative Procedures entered on October 18, 2012 [ECF No. 1386] (as may be amended, the "**Case Management Order**"); and it appearing that no other or further notice need be provided; and the relief requested in the Original Motion and the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having determined that the legal and factual bases set forth in the Original Motion and the Motion and at the applicable hearings establish just cause for the final relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the relief requested in the Original Motion and the Motion is hereby granted, and this Order amends and supersedes the Final Order in its entirety solely with respect to Coal Sales Contracts entered into on or after the date hereof and in accordance with the terms of this Order; and it is further

ORDERED that the Debtors, in their reasonable business judgment, and consistent with their ordinary course of business and past practices, are authorized to (i) enter into and fully perform under Coal Sale Contracts in the ordinary course of business, subject to the Procedures (as defined below), which Coal Sale Contracts shall contain terms and

conditions consistent with the applicable Debtor's ordinary course of business and past practices (except as provided for below for Non-Ordinary Coal Sale Contracts), and (ii) take any actions and execute any agreements or other documentation that are reasonably necessary or desirable to effectuate the postpetition transactions contemplated thereunder; and it is further

ORDERED that, solely for the purposes of the Procedures and the calculation of the Contract Amount (as defined below), a series of related Coal Sale Contracts within any given ninety-day period between any of the Debtors, on the one hand, and any given counterparty or its insiders and/or affiliates, on the other hand, shall be treated as a single transaction; and it is further

ORDERED that the Procedures, as set forth in this Order, are hereby approved and may be implemented in the Debtors' Chapter 11 cases; and it is further

ORDERED that if the Procedures conflict with the Case Management Order, the Procedures shall control with respect to the entering into and performing under Coal Sale Contracts. In all other circumstances, except as otherwise provided by separate order, the applicable Case Management Order shall govern; and it is further

ORDERED that following procedures (the "**Procedures**") are hereby established:

1. For purposes of the Procedures, the "**Contract Amount**" shall be the gross revenue expected over the contract term (to the extent quantifiable or reasonably estimable, as reasonably determined by the Debtors in their reasonable business judgment).

2. **Tier 1 Coal Sale Contracts:** With respect to Coal Sale Contracts for which the Contract Amount is **less than or equal to \$125,000,000**, the Debtors, in their reasonable business judgment and without further action by this Court or prior notice to

any party, may enter into and perform under such Coal Sale Contracts and take any further actions and execute any agreements or other documentation that are reasonably necessary or desirable to effectuate such Coal Sale Contracts and the transactions contemplated thereunder. The Debtors will provide, on a confidential basis, the Official Committee of Unsecured Creditors (the “**Committee**”) and the DIP Agents (as defined below), by and through their counsel, with a notice by the 15th day after the last business day of each calendar month listing an aggregate summary of the Tier 1 Coal Sale Contracts entered into during the previous month. Any contract that would be subject to the parameters set forth in this paragraph that contains provisions outside of the ordinary course of the Debtors’ businesses and not consistent with the Debtors’ past practices shall not be a Tier 1 Coal Sale Contract (“**Non-Ordinary Coal Sale Contracts**”), and will be deemed a Tier 2 Coal Sale Contract irrespective of the Contract Amount. In addition, except with respect to arms’-length, ordinary course intercompany Coal Sale Contracts, any Coal Sale Contract with an insider, Peabody Energy Corporation or its insiders and/or affiliates, or Arch Coal, Inc. or its insiders and/or affiliates shall not be a Tier 1 Coal Sale Contract, and shall be deemed a Tier 2 Coal Sale Contract irrespective of the Contract Amount.

3. **Tier 2 Coal Sale Contracts:** With respect to Coal Sale Contracts for which the Contract Amount is **greater than \$125,000,000 and less than or equal to \$200,000,000**, the following procedures shall be followed:

(a) The Debtors shall serve via e-mail a notice specifying the Coal Sale Contract to be entered into, its term, the volume of coal to be sold, the name(s) of the facilities, mines or other properties from which such coal was or will be produced, mined or otherwise obtained, whether such Coal Sale Contract contains any provision(s)

purporting to prohibit, restrict, or condition any assignment or pledge thereof, and the applicable sale prices (the “**Confidential Notice**”) on the following parties on a confidential basis: (i) the U.S. Trustee, (ii) counsel to the Committee, Kramer Levin Naftalis & Frankel LLP, Attn: Thomas Moers Mayer, Adam C. Rogoff and Gregory G. Plotko, who are authorized to share the Confidential Notice with the members of the subcommittee of the Committee formed to address Coal Sale Contracts only as agreed among the Debtors and the Committee professionals, (iii) the financial advisor to the Committee, Houlihan Lokey Capital, Inc., Attn: Matthew A. Mazzucchi and Fredrick Vescio and (iv) the administrative agents for the Debtors’ postpetition lenders (the “**DIP Agents**”) via their attorneys, Weil, Gotshal & Manges LLP, Attn: Marcia Goldstein and Joseph Smolinsky, and Willkie Farr & Gallagher LLP, Attn: Margot B. Schonholtz and Ana Alfonso (collectively the “**Notice Parties**”), who are authorized to share the Confidential Notice with any professionals to the DIP Agents on a confidential basis. In addition to the foregoing, the Confidential Notice (for either a Tier 2 or Tier 3 contract) shall expressly identify and describe the provisions of any Non-Ordinary Coal Sale Contract that differ from the terms of Coal Sale Contracts entered into in the applicable Debtor’s ordinary course of business and consistent with its past practices.

(b) The deadline for submitting an objection (a “**Contract Objection**”) to the proposed Coal Sale Contract shall be the longer of 72 hours or two business days after the Confidential Notice is served on the Notice Parties (the “**Tier 2 Contract Objection Deadline**”).

(c) A Contract Objection will be considered timely only if it is actually received, including via e-mail, by (i) Patriot Coal Corporation, 500 Lee Street East,

Charleston, WV 25301, Attn: Bob Bennett, (ii) counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner and Brian M. Resnick; (iii) counsel to the administrative agents for the Debtors' postpetition lenders, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Marcia Goldstein and Joseph Smolinsky, and (b) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Margot B. Schonholtz and Ana Alfonso; and (iv) counsel to the Committee, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Adam C. Rogoff, Esq. and Gregory G. Plotko, Esq.; (collectively, the "**Objection Notice Parties**") on or before the Tier 2 Contract Objection Deadline.

(d) If no Contract Objections are timely received by the Contract Objection Deadline, the Debtors may immediately enter into and perform under the Coal Sale Contracts listed in the Confidential Notice and take any actions and execute any agreements or other documentation that are reasonably necessary or desirable to effectuate such contracts and the transactions contemplated thereunder. If a Contract Objection is timely received and cannot be settled by the Debtors and the objecting parties (with notice to the Committee's counsel and counsel to the DIP Agents), the Coal Sale Contract that is the subject of the Contract Objection will not be entered into except upon order of the Court; *provided, however*, that any Coal Sale Contract set forth in the Confidential Notice that is not the subject of a Contract Objection may be immediately entered into in accordance with the foregoing sentence.

4. **Tier 3 Coal Sale Contracts:** With respect to Coal Sale Contracts for which the Contract Amount is **greater than \$200,000,000**, the following procedures shall be followed:

(a) The Debtors shall file with the Court a notice specifying the Coal Sale Contract to be entered into and the applicable Contract Amount, and serve via e-mail a Confidential Notice on the Notice Parties.

(b) The deadline for submitting a Contract Objection to the proposed Coal Sale Contract shall be the longer of 72 hours or two business days after the Confidential Notice is filed with the Court and served on the Notice Parties (the “**Tier 3 Contract Objection Deadline**”).

(c) A Contract Objection will be considered timely only if it is filed with the Court and served so as to be actually received, including via e-mail, by (i) the Objection Notice Parties and (ii) the Notice Parties on or before the Tier 3 Contract Objection Deadline.

5. If no Contract Objections are timely received by the Contract Objection Deadline, the Debtors may immediately enter into and perform under the Coal Sale Contracts listed in the Confidential Notice and take any actions and execute any agreements or other documentation that are reasonably necessary or desirable to effectuate such contracts and the transactions contemplated thereunder. If a Contract Objection is timely received and cannot be settled by the Debtors and the objecting parties (with notice to the Committee’s counsel and counsel to the DIP Agents), the Coal Sale Contract that is the subject of the Contract Objection will not be entered into except upon Court order; *provided, however*, that any Coal Sale Contract set forth in the Confidential Notice that is

not the subject of a Contract Objection may be immediately entered into in accordance with the foregoing sentence; and it is further

ORDERED that, subject to the Procedures set forth in this Order, nothing herein shall impair the Debtors' ability to conduct their business in the ordinary course of business without seeking approval of this Court; and it is further

ORDERED that nothing contained herein shall (i) convert the priority of any claim from a prepetition claim into an administrative expense claim, (ii) create or enhance any rights or status of any claim held by any person or entity or (iii) acknowledge, grant or otherwise permit any prepetition right of offset or recoupment by a non-debtor with respect to any claim asserted against the Debtors; and it is further

ORDERED that nothing in this Order or the Motion shall be deemed to constitute the post-petition assumption, reaffirmation or adoption of any prepetition agreement pursuant to section 365 of the Bankruptcy Code; and it is further

ORDERED that nothing herein should be construed to limit the Debtors' ability to amend Coal Sale Contracts in the ordinary course of business and consistent with past practices; *provided* that, if a Coal Sale Contract amendment would be subject to the Procedures were it a newly entered into Coal Sale Contract, such amendment shall be subject to the Procedures proposed herein; and it is further

ORDERED that nothing herein shall relieve the Debtors of any of their obligations under the Debtors' postpetition lending facility or enlarge the Debtors' rights with respect thereto; and it is further

ORDERED that the automatic stay is hereby modified, to the extent applicable, solely to the extent necessary to enable any applicable counterparty to a Coal Sale Contract

entered into postpetition pursuant to the Procedures and this Order to exercise their contractual rights and remedies under such Coal Sale Contract and solely to the extent as may be applicable under the terms of the applicable Coal Sale Contract (and nothing herein shall expand a non-Debtor counterparties' rights and remedies from those provided for in the applicable postpetition Coal Sale Contract), including to:

(a) exercise contractual rights and remedies following default or "event of default" (as defined in the applicable Coal Sale Contract) with respect to the applicable Debtor counterparty, which default or "event of default" has occurred postpetition and is then continuing, to effectuate (if permitted under the applicable Coal Sale Contract) early termination and liquidation of such Coal Sales Contract and any postpetition ancillary related transactions entered into as part of the applicable Coal Sale contract;

(b) if permitted under the applicable Coal Sale Contract, exercise contractual rights and remedies to net or setoff postpetition obligations arising under transactions entered into as part of the applicable Coal Sale Contract between the applicable Debtor and its applicable counterparty, upon the termination and liquidation of any outstanding postpetition transactions thereunder in accordance with subsection (a) above and to apply any collateral or the proceeds posted under the Coal Sale Contract thereof to any net postpetition amounts owed thereunder to such counterparty by such applicable Debtor; and

(c) if permitted under the applicable Coal Sale Contract, seek to collect from the applicable Debtor or counterparty such amounts that may be owed to such counterparty following such netting and setoff of postpetition obligations arising under the Coal Sale Contract; and it is further

ORDERED that no postpetition obligation, payment, release, transfer or grant of security or other property by the applicable Debtors to a counterparty to a Coal Sale Contract under, pursuant to, and consistent with the terms and conditions of such Coal Sale Contract shall be voidable or recoverable under Chapter 5 of the Bankruptcy Code or applicable state law; and it is further

ORDERED that any postpetition liability of a Debtor and any postpetition amounts due and owing from a Debtor pursuant to a Coal Sale Contract shall, to the extent unpaid, constitute administrative expenses under section 503(b) of the Bankruptcy Code, and shall be entitled to priority pursuant to section 507(a)(2) of the Bankruptcy Code; *provided* that nothing herein shall impair the Debtors' or any other party's rights to dispute the validity of any amounts or other obligations under any Coal Sale Contract; and it is further

ORDERED that neither the entry of this Order nor any statement contained herein is intended to be, and none should be construed as, a waiver or compromise of any rights, other than as expressly set forth herein, and that all parties in interest, including, without limitation, the Debtors, expressly reserve all of their other respective rights, and preserve all of their other respective claims, against one another, including, without limitation, any right, claim or defense that any party in interest, including the Debtors, has or may have in connection with the above captioned Chapter 11 cases, including but not limited to any Bankruptcy Code Chapter 5 causes of action or related claims (other than those causes of action or related claims expressly waived hereunder) and any defenses thereto. Without limiting the foregoing, the modification of the automatic stay as provided for herein is without prejudice to any right, claim or defense that any party in interest, including the applicable Debtors, may have that the exercise of rights and remedies by a non-debtor


counterparty under the applicable Coal Sale Contract is not permitted by the terms thereof or enforceable under applicable nonbankruptcy law; and it is further

ORDERED that notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or any other Bankruptcy Rule, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that the requirements of Bankruptcy Rule 6003 are satisfied by the contents of the Motion and the arguments and evidence presented at the applicable hearings; and it is further

ORDERED that the Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order; and it is further

ORDERED that the notice procedures set forth in the Motion are good and sufficient notice and satisfy Bankruptcy Rule 9014 by providing parties with a notice and an opportunity to object and be heard at a hearing.


KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: March 1, 2013
St. Louis, Missouri
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