

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

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In re: :  
: Chapter 11  
PATRIOT COAL CORPORATION, *et al.*, : Case No. 12-51502-659  
: (Jointly Administered)  
Debtors. :  
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:  
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**STIPULATED CONFIDENTIALITY PROTECTIVE ORDER**

This STIPULATED CONFIDENTIALITY PROTECTIVE ORDER (the “**Order**”) is made as of June 5, 2013 between and among Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession (the “**Debtors**”), the Official Committee of Unsecured Creditors of Patriot Coal Corporation (the “**Committee**”) (together, “**Movants**”), and Peabody Energy Corporation (“**Peabody**”) (collectively with Movants, the “**parties**”). Movants have served a request for the production of documents on Peabody pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “**Request**”). Movants further anticipate that they may request and receive production of other discovery from Peabody and third parties in a variety of contexts in these chapter 11 cases, and intend for this Order to apply to any proceedings in this Court relating to these chapter 11 cases, including, but not limited to, any request or motion made pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, litigation, mediation, dispute, contested matter or adversary proceeding (collectively, the “**Proceedings**”). The parties agree that discovery produced or disclosed in the Proceedings shall only be used in the manner set forth herein, including without limitation the restrictions set forth with respect to the litigation against Peabody captioned *Lowe v. Peabody Holding Co. LLC*, No. 12-cv-06925 (the “**West Virginia Action**”).

The parties further acknowledge that the disclosure of non-public information could result in severe harm to Peabody’s and its affiliates’ business. In order to facilitate the disclosure of Confidential Information and AEP Confidential Information (each as defined below) to Movants and other persons or entities identified in Sections 4(a) and 5(a) of this Order (all such persons and entities, together with Movants, “**Recipients**”) while protecting Peabody’s and its affiliates’ interests, the parties hereby agree that the disclosure, discovery, production, and use of Confidential Information and AEP Confidential Information provided by Peabody pursuant to the Request or other Proceedings shall be governed by the following terms and conditions.

The parties further acknowledge that one or more Movant(s) have made requests and filed motions pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure that are directed to third parties, that additional discovery may take place in the Proceedings, and that the documents and information produced by third parties may involve Confidential Information and

AEP Confidential Information, the disclosure of which to the United Mine Workers of America (the “**UMWA**”) is governed by a separate order. The parties intend that the provisions of this Order also will apply to such disclosures and productions made by third parties.

1. **Confidential Information.** For purposes of this Order, “Confidential Information” means all non-public information (whether in writing or in any other format) disclosed in accordance with the terms of this Order that Peabody in good faith considers to contain, constitute, reflect, or embody confidential, commercially sensitive or personal, non-public information, including, but not limited to, information relating to Peabody’s and its affiliates’ financial and/or business operations, business ventures, strategic plans, pricing, marketing strategies and programs, labor/employment matters or considerations, ideas, concepts, business plans, financial condition and projections, identifying information about employees and retirees, contracts, distribution arrangements, trade secrets, and/or ideas. However, Confidential Information does not include information as identified below in Section 8 (Exclusions).

2. **AEP Confidential Information.** For purposes of this Order, “AEP Confidential Information” means commercially sensitive information relating to Peabody’s and its affiliates’ contracts or other commercial arrangements with Committee member American Electric Power (“**AEP**”).

3. **Procedure for Confidential Information and AEP Confidential Information.**

- a. **Documents.** If Peabody reasonably believes that information to be produced by Peabody in documents is Confidential Information or AEP Confidential Information, it shall designate that material by stamping or otherwise marking that material with the legend “CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER” or “AEP CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER,” as applicable, or by sending a letter to counsel for Movants designating the material as such. With respect to any third party production covered by this Order, Peabody shall be afforded 30 days to designate any materials produced as Confidential Information or AEP Confidential Information (the “**Review Period**”). The Recipients shall treat such third party materials as AEP Confidential Information until the earlier of (i) designation by Peabody, in which case the terms of this Order shall apply or (ii) lapse of the Review Period without designation by Peabody, in which case the materials shall not be Confidential Information or AEP Confidential Information.

- b. **Depositions.** If Peabody reasonably believes that information to be disclosed during a deposition is Confidential Information or AEP Confidential Information, its counsel shall make a statement on the record at the time of disclosure or notify counsel for all other parties in writing within ten (10) business days after receipt by counsel for Peabody of the transcript of such deposition. The legend “CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER” or “AEP CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER” shall be affixed to the first page of all copies of any transcript, as applicable. All transcripts and recordings of depositions shall be treated as confidential for ten (10) business days after receipt of the transcript or recording by counsel for Peabody, during which time Peabody’s counsel may designate the transcripts or recordings of depositions as Confidential Information or AEP Confidential Information.
  
- c. **Interrogatory and Request for Admission Responses.** If Peabody reasonably believes that information included in a response to an interrogatory or request for admission is Confidential Information or AEP Confidential Information, it shall state in its answer that it contains “CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER” or “AEP CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER,” as applicable.
  
- d. **Procedure for Challenging a Designation.** If a Movant objects to such designation, counsel for Movants and Peabody shall meet and confer. If the Movant’s objection is not resolved following the meet and confer, the Movant may apply to the Court for an order, to be made after notice to Peabody and a hearing, that the material sought to be protected is not entitled to such status and protection. In the event of a dispute concerning the designation of material as Confidential Information or AEP Confidential Information, (i) Peabody shall bear the burden of proving that the information has been properly designated as Confidential Information or AEP Confidential Information, and (ii) the material shall be treated as so designated until the Court orders to the contrary. (The procedures of this Section 3(d) may be invoked to challenge a claim of attorney-client privilege, attorney work product or other protection, privilege or immunity regarding material under Section 14 (Inadvertent Disclosure), but in any such challenge the disclosure shall be deemed inadvertent with no further showing by the Peabody regarding the steps taken to protect against inadvertent disclosure.) A Movant’s acquiescence to a designation of Confidential Information or AEP Confidential Information shall not prejudice its right to, at a later date, object to the designation, but an order entered by the Court making a determination with respect to one Movant’s challenge shall be binding upon all parties.

4. **Limitations of Use for Confidential Information.**

- a. Subject to the further limitations of Section 6 below with respect to disclosure to the UMWA, each Movant shall be permitted to disclose on a confidential basis

any Confidential Information to (i) its members, officers, directors, and employees that are assisting in prosecuting or defending any of the Proceedings, (ii) counsel (including the clerical, paralegal, and other staff and agents of counsel) of such Movant that are assisting in prosecuting or defending any of the Proceedings, (iii) the outside consultants, experts, financial advisors, or other agents or professionals (including the clerical, paralegal, and other staff and agents of such parties) (collectively, “**Advisors**”) of such Movant that are assisting in prosecuting or defending any of the Proceedings, (iv) in the case of the Committee, the outside counsel of its members, the Advisors of its members, and the Advisors’ outside counsel; and (v) in the case of the Debtors, outside counsel and the Advisors of the Special Litigation Committee of the Board of Directors of Patriot Coal Corporation (the “**Special Litigation Committee**”).

- b. Recipients (i) shall not use, or allow to be used, any Confidential Information for any purpose other than in connection with these Proceedings, including without limitation in connection with the West Virginia Action, (ii) shall not, without Peabody’s prior written consent, disclose any Confidential Information to any person or entity other than as provided for herein, (iii) shall use reasonable efforts to hold and maintain the Confidential Information in strict confidence using the same degree of care that each Recipient uses with respect to its own comparable confidential information, and (iv) shall be permitted to disclose Confidential Information to other Recipients in accordance with the terms set forth herein.
- c. Every person or entity to whom Confidential Information or information contained therein is disclosed, summarized, described, characterized, or otherwise communicated or made available in whole or in part first shall be advised that the material or information is being disclosed pursuant and subject to the terms of this Order and may not be disclosed, summarized, described, characterized, or otherwise communicated or made available in whole or in part to any other person or entity, except pursuant to the terms hereof. Further, any person or entity (other than outside counsel) listed in 4(a)(iii), (iv), and (v) above who is given access to Confidential Information first shall be required to confirm his/her understanding and agreement to abide by the terms of this Order by signing a copy of Exhibit A attached hereto.

5. **Limitations of Use for AEP Confidential Information.**

- a. AEP Confidential Information will be disclosed only to outside counsel and Advisors providing advice on the Proceedings to the Committee, the Debtors, or the Special Litigation Committee; *provided, however*, that the Committee’s counsel and Advisors may advise its members sufficient to permit the Committee to exercise its fiduciary duties (which advice may not disclose material terms in the AEP Confidential Information), all subject to the further limitation of Section 6 below with respect to disclosure to the UMWA.
- b. Recipients (i) shall not use, or allow to be used, any AEP Confidential Information for any purpose other than in connection with these Proceedings,

(ii) shall not, without Peabody's prior written consent, disclose any AEP Confidential Information to any person or entity other than as provided for herein, (iii) shall use reasonable efforts to hold and maintain the AEP Confidential Information in strict confidence using the same degree of care that each Recipient uses with respect to its own comparable confidential information, and (iv) shall be permitted to disclose AEP Confidential Information to outside counsel and Advisors providing advice on the Proceedings to the Committee, the Debtors, or the Special Litigation Committee in accordance with the terms set forth herein.

- c. Every person or entity to whom AEP Confidential Information or information contained therein is disclosed, summarized, described, characterized, or otherwise communicated or made available in whole or in part first shall be advised that the material or information is being disclosed pursuant and subject to the terms of this Order and may not be disclosed, summarized, described, characterized, or otherwise communicated or made available in whole or in part to any other person or entity, except pursuant to the terms hereof. Further, any person or entity listed in Section 5(a) above, other than outside counsel, who is given access to AEP Confidential Information first shall be required to confirm his/her understanding and agreement to abide by the terms of this Order by signing a copy of Exhibit A attached hereto.

6. **Limitation on Disclosure to the UMWA.** Disclosure of documents or information produced by Peabody in the Proceedings and documents or information relating to Peabody and its affiliates produced by third parties in the Proceedings to Committee member UMWA shall be governed by the Order to be entered by this Court in ruling on Debtors' and the Committee's Motion to Conduct Discovery of Peabody Pursuant to Rule 2004 and no disclosure to the UMWA shall occur before entry of that Order.

7. **Court Filings.** If a Movant wishes to file with the Court any pleadings, motions or other papers containing Confidential Information or AEP Confidential Information or any information derived therefrom, such pleadings, motions or other papers shall be filed with the Court in redacted form. The Movant may file a motion to file such pleadings, motions or other papers under seal unless the Court has granted leave to file such material on the public docket. Exhibits to such pleadings, motions or other papers that contain Confidential Information or AEP Confidential Information or information derived therefrom shall be filed in their entirety under seal. The requirements of this section may be waived by Peabody only in writing.

8. **Exclusions.** Confidential Information or AEP Confidential Information shall not include any information or document which (a) is lawfully known to a Recipient at the time of disclosure, without obligation of confidentiality, (b) is independently developed by a Recipient without reference to or use of Confidential Information or AEP Confidential Information, (c) becomes known to a Recipient on a non-confidential basis from another source, unless the Recipient knows or reasonably believes that such other source was subject to a confidentiality restriction at that time, (d) is or becomes part of the public domain through no wrongful act of any Recipient, (e) is disclosed publicly pursuant to any judicial request or order, subpoena of

any kind, or formal regulatory request, or (f) is determined by this Court not to be Confidential Information or AEP Confidential Information.

9. **Obligations on Conclusion of the Proceedings.** Within forty-five calendar days after the later of confirmation, closing or dismissal or conclusion of the Proceedings and any appeals, all Recipients to whom Confidential Information and/or AEP Confidential Information were produced either: (i) shall return such material and all copies thereof to counsel for Peabody, or (ii) shall advise counsel for Peabody in writing that they have destroyed all such Confidential Information and AEP Confidential Information in their possession in a manner that ensures that such material will not be disclosed or disseminated or recovered by any person or entity; provided that outside counsel shall be entitled to retain all court papers, deposition and trial transcripts, exhibits used in affidavits, at depositions and at trial, and attorney work product containing Confidential Information or AEP Confidential Information, provided that such outside counsel and employees of such outside counsel shall not disclose such Confidential Information or AEP Confidential Information to any person or entity except (a) by written agreement with Peabody, or (b) pursuant to a Court order, regulatory requirement, or subpoena, provided that outside counsel shall give notice to Peabody within three (3) business days after service to enable Peabody to seek a protective order before any such production.

10. **Remedies.** Money damages alone would not be a sufficient remedy for any breach or threatened breach of this Order and Peabody shall be entitled to specific performance and injunctive or other equitable relief for any such breach or threatened breach by appropriate action in this Court; *provided, however*, that each Recipient shall be solely responsible for its, his or her own performance hereunder.

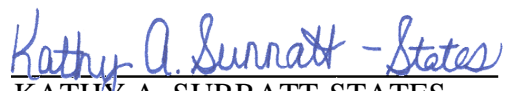
11. **Compelled Disclosure.** Notwithstanding anything else herein, if a Recipient is legally compelled (whether by regulatory request, deposition, interrogatory, request for documents, subpoena, civil investigation, demand or similar process) to disclose any Confidential Information or AEP Confidential Information, that Recipient, unless requested not to do so by a competent judicial or governmental entity, shall notify Peabody in writing of such requirement as soon as reasonably practicable, but no later than three (3) business days after service, so that Peabody may seek a protective order or other appropriate remedy and/or waive compliance with the provisions hereof. Failing the timely entry of a protective order or receipt of a waiver hereunder, the Recipient may disclose, without liability hereunder, that portion (and only that portion) of the Confidential Information or AEP Confidential Information that the Recipient has been advised by written opinion of counsel that it is legally compelled to disclose; *provided, however*, that the Recipient agrees to use its best efforts to obtain assurance, at no cost to the Recipient, that confidential treatment will be accorded such Confidential Information or AEP Confidential Information by the person or persons or entity or entities to whom it is to be disclosed.

12. **General.** No waiver of any breach or default shall be deemed or construed to constitute a waiver of any other violation or other breach of any of the terms, provisions, and covenants contained in this Order, and forbearance to enforce one or more of the remedies provided on an event of default will not be deemed or construed to constitute a waiver of the default or of any other remedy provided for in this Order.

13. **Submission to Jurisdiction.** The parties hereby submit to the jurisdiction of this Court to resolve any matters relating to this Order.

14. **Inadvertent Disclosure.** Pursuant to Federal Rule of Evidence 502(d), the disclosure of material (including without limitation documents, communications or information) covered by the attorney-client privilege, work product or other applicable state or federal protection or immunity shall not be deemed to waive, and shall not waive, such privilege or protection in this or any other federal or state proceeding. If Peabody determines that it has disclosed material, or a third party has disclosed material pursuant to this Order, to which Peabody wishes to assert a claim of attorney-client privilege, work product protection, or other applicable protection or immunity, Peabody will notify Movants in writing within seven business days of its discovery of such disclosure. Recipients receiving such material shall electronically delete such material and return all hard copies to Peabody within thirty (30) days of any written notification, unless a Movant challenges the claim of attorney-client privilege, work-product protection, and/or other privilege or immunity. Any challenge to such claim shall be made pursuant to the procedures set forth in Section 3(d) above and, pursuant to that Section 3(d), shall not require any showing by Peabody regarding the steps taken to protect such material from disclosure. Upon receipt of a written notification under this section, Recipients shall refrain from viewing or using such material in any way until either Peabody determines that it will not assert a claim of privilege or other protection or any dispute regarding the assertion of privilege or other protection is resolved by the parties or the Court. If a Recipient identifies in a production that it has received any material covered by the provisions of this section, it shall notify Peabody in writing within seven business days after identifying such material and follow the protocols set forth in this section.

IN WITNESS WHEREOF, a duly authorized representative of each party hereby stipulates to entry of this Order as of the date first written above.

  
KATHY A. SURRATT-STATES  
Chief United States Bankruptcy Judge

DATED: June 7, 2013  
St. Louis, Missouri  
jjh

PATRIOT COAL CORPORATION  
And its subsidiaries (the "Debtors")

OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS OF  
PATRIOT COAL CORPORATION

By: /s/ Michael J. Russano

By: /s/ P. Bradley O'Neill

PEABODY ENERGY CORPORATION

By: /s/ Paula Batt Wilson



**EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

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In re:	:
	:
	: Chapter 11
PATRIOT COAL CORPORATION, <i>et al.</i> ,	: Case No. 12-51502-659
	: (Jointly Administered)
Debtors.	:
	:
	:
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**ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND  
CONFIDENTIAL INFORMATION**

The undersigned hereby acknowledges that he/she has read the Stipulated Confidentiality Protective Order dated \_\_\_\_\_ in the above-captioned action and attached hereto (the "Order"), understands the terms thereof, and agrees to be bound by its terms. The undersigned acknowledges that he or she shall be treated as a "Recipient" under the Order and shall be subject to the use restrictions set forth therein, including without limitation with respect to the West Virginia Action (as defined in the Order). The undersigned submits to the jurisdiction of the United States Bankruptcy Court for the Eastern District of Missouri, Eastern Division, in matters relating to the Order and understands that the terms of the Order obligate him/her to use materials and information designated CONFIDENTIAL INFORMATION - SUBJECT TO PROTECTIVE ORDER or AEP CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER in accordance with the Order solely for the purposes of the Proceedings (as defined in the Order).

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

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

Employer: \_\_\_\_\_

Business Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_ Signature \_\_\_\_\_