

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 12-12900 (SCC)

Jointly Administered

**AMENDED ORDER (i) PROHIBITING UTILITIES FROM ALTERING,
REFUSING OR DISCONTINUING SERVICE, (ii) DEEMING UTILITY
COMPANIES ADEQUATELY ASSURED OF FUTURE PERFORMANCE AND
(iii) ESTABLISHING PROCEDURES FOR DETERMINING REQUESTS FOR
ADDITIONAL ADEQUATE ASSURANCE**

Upon the motion (the “**Motion**”)² of Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) for an order (a) determining that the Utilities (as defined below) have “adequate assurance of payment” within the meaning of section 366 of the Bankruptcy Code, (b) approving the Debtors’ proposed offer of adequate assurance and procedures set forth below for resolving requests by Utilities for additional or different assurances beyond those set forth in this Motion, (c) prohibiting the Utilities from altering, refusing, or discontinuing any Utility Services on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Debtors’ proposed adequate assurance and (d) establishing procedures for the Utilities to seek to opt out of the Debtors’ proposed

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 such term in the Motion.

adequate assurance procedures; 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 Information Officer, filed in support of the Debtors' first-day pleadings (the "**Declaration**"); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.) as amended by Standing Order M-431, dated February 1, 2012 (Preska, C.J.); 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 due and proper notice of the Motion having been provided to (a) the Office of the United States Trustee for the Southern District of New York (the "**U.S. Trustee**"), (b) those creditors holding the five largest secured claims against the Debtors' estates on a consolidated basis, (c) those creditors holding the 50 largest unsecured claims against the Debtors' estates on a consolidated basis, (d) attorneys for the administrative agents for the Debtors' postpetition lenders, (e) the Internal Revenue Service, (f) the Securities and Exchange Commission, (g) the United States Environmental Protection Agency, (h) the United States Attorney's Office for the Southern District of New York and (i) those Utilities listed on Exhibit B to the Motion; and it appearing that no other or further notice need be provided; and the relief requested in the Motion being essential to the continued operation of the Debtors' businesses and in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion; and the Court having determined that the legal and factual bases set forth in the Motion and the Declaration establish just cause for the relief

granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the relief requested in the Motion is hereby granted on a final basis as set forth herein; and it is further

ORDERED that this Order amends and replaces in its entirety the Order (i) Prohibiting Utilities from Altering, Refusing or Discontinuing Service, (ii) Deeming Utility Companies Adequately Assured of Future Performance and (iii) Establishing Procedures for Determining Requests for Additional Adequate Assurance entered by the Court on July 26, 2012 [ECF No. 189]; and it is further

ORDERED that the Debtors are authorized to pay on a timely basis, in accordance with their prepetition practices, all undisputed invoices for utility services (collectively, the “**Utility Services**”) rendered by utilities (as that term is used in section 366 of the Bankruptcy Code, the “**Utilities**”) to the Debtors after the Petition Date; and it is further

ORDERED that the Debtors shall provide a deposit in an amount equal to two weeks of Utility Service (the “**Adequate Assurance Deposit**”) less any deposit then held by such Utility, calculated as a historical average over the past 12 months, to each Utility that requests such a deposit in writing as set forth below; *provided* that such requesting Utility does not already hold a deposit equal to or greater than two weeks of Utility Service; *provided further* that such Utility is not currently paid in advance for its services; and it is further

ORDERED that the Utilities, whether under direct relationship with the Debtors or through the Debtors’ landlords or service agencies, including but not limited to the

Utilities identified on Exhibit B to the Motion, as may be supplemented by the Debtors from time to time by the filing of a notice with the Court (a “**Supplemental Notice**” and, together with Exhibit B to the Motion, as may be so supplemented from time to time, the “**Utilities List**”), are prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors, or requiring additional adequate assurance of payment other than the Adequate Assurance Deposit (and, in conjunction with the Debtors’ ability to pay for Utility Services in the ordinary course of business, the “**Proposed Adequate Assurance**”), except in compliance with the following procedures (the “**Adequate Assurance Procedures**”):

(a) Any Utility requesting payment of an Adequate Assurance Deposit must send to (i) the Debtor, Patriot Coal Corporation, 12312 Olive Boulevard, Suite 400; St. Louis, Missouri 63141 Attn: Robert L. Mead, Vice President and Treasurer and (ii) proposed counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York, 10017, Attn: Michelle M. McGreal (together, the “**Request Parties**”) a written request (a “**Deposit Request**”) that names the Utility and includes payment instructions for the Adequate Assurance Deposit, on or before the date that is 21 days from the entry of this Order (the “**Adequate Assurance Deposit Request Deadline**”).

(b) Upon the receipt of a Deposit Request, the Debtors shall provide the requesting Utility with the corresponding Adequate Assurance Deposit; *provided, however*, that such requesting Utility does not already hold a deposit equal to or greater than two weeks of Utility Services; *provided further* that such Utility is not currently paid in advance for its Utility Services. Any Utility that

submits a Deposit Request and already holds a deposit of less than two weeks of Utility Service shall receive an amount equal to the difference between the deposit held by such Utility and the Adequate Assurance Deposit. Any Utility that is currently paid in advance for its Utility Services shall continue to be so paid in the ordinary course of business. The Debtors shall provide, on a confidential basis, a report of all Adequate Assurance Deposits paid pursuant to this Order on a monthly basis to (1) the U.S. Trustee, (2) the Official Committee of Unsecured Creditors (the “**Committee**”), via the proposed counsel to the Committee, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Thomas Moers Mayer, Adam C. Rogoff and Gregory G. Plotko and (3) the administrative agents for the Debtors’ postpetition lenders (the “**DIP Agents**”) via their attorneys, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Marcia Goldstein and Joseph Smolinsky, and Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Margot B. Schonholtz and Ana Alfonso; *provided, however,* that Committee members shall receive the report only as agreed among the Debtors and the Committee professionals, and the DIP Agents and their professionals shall keep the report confidential and, in each case, shall not disclose any of the information in the report to any other party, including, but not limited to, any of the Debtors’ postpetition lenders, without prior written consent from the Debtors.

(c) Any Utility desiring additional adequate assurance in the form of a further deposit, prepayment or mechanic otherwise different from the Proposed

Adequate Assurance must, on or prior to the Adequate Assurance Deposit Deadline, file with the Court and serve on the Request Parties and proposed counsel to the Committee, Kramer Levin Naftalis & Frankel, 1177 Avenue of the Americas, New York, NY 10036, Attn: Adam C. Rogoff and Gregory G. Plotko a request (an “**Additional Assurance Request**”), which must be in writing and set forth (i) the amount and form of additional assurance payment requested, (ii) the location for which the Utility Services are provided and the relevant account numbers, (iii) the Debtors’ payment history for the most recent 12 months, (iv) a list of any deposits, prepayments or other security currently held by the Utility on account of the Debtors, (v) a description of any prior material payment delinquency or irregularity and (vi) an explanation of why the Utility believes the Proposed Adequate Assurance is not sufficient adequate assurance of payment. Any request for additional adequate assurance filed before entry of this Order shall be deemed to be a timely filed Additional Assurance Request.

(d) The Debtors may, in their reasonable business judgment, resolve and settle any Additional Assurance Request by mutual agreement with the Utility and without further order of the Court. The Debtors shall not be required to provide a Utility that files an Additional Assurance Request with an Adequate Assurance Deposit until such Additional Assurance Request is resolved.

(e) For any other Utility for which the Debtors are not able to reach a consensual resolution, the Debtors will file a motion (which may address the Additional Assurance Requests of multiple Utilities) and request a hearing before this Court to determine the adequacy of assurance of payment with respect to a

particular Utility (the “**Determination Hearing**”) pursuant to section 366(c)(3) of the Bankruptcy Code.

(f) Pending resolution of a Utility’s Additional Assurance Request by the Court, such Utility shall be prohibited from discontinuing, altering, or refusing service to the Debtors.

(g) Any Utility that does not submit a Deposit Request or does not file an Additional Assurance Request shall be deemed to have been provided with adequate assurance of payment as required by section 366 of the Bankruptcy Code and shall be prohibited from discontinuing, altering or refusing to provide Utility Services, including on account of unpaid charges for prepetition Utility Services, during the pendency of these proceedings; and it is further

ORDERED that this Order shall be binding on all Utilities, regardless of whether or when such Utility was added by Supplemental Notice; *provided, however*, that the Adequate Assurance Deposit Request Deadline shall be extended for any Utility first listed in such Supplemental Notice to the date that is 21 days from the date that such Supplemental Notice is filed; and it is further

ORDERED that each Utility shall be deemed to have adequate assurance of payment unless and until (a) the Debtors, in their reasonable business judgment, agree to a Deposit Request, (b) the Debtors, in their reasonable business judgment, agree to an Additional Assurance Request or agree to alternative adequate assurance of payment with the Utility or (c) this Court enters an order requiring that additional adequate assurance of payment be provided; and it is further

ORDERED that nothing herein constitutes a finding that any entity is or is not a Utility hereunder or under section 366 of the Bankruptcy Code, whether or not such entity is included in the Utilities List; and it is further

ORDERED that the Debtors shall (a) serve a copy of this Order upon each of the Utilities identified on Exhibit B to the Motion by e-mail or fax or (where the Debtors do not have the e-mail address or fax number for a Utility) by first-class mail and (b) post the Order on the Debtors' case information website (located at www.PatriotCaseInfo.com); and it is further

ORDERED that the Debtors are authorized to amend or supplement as necessary the Utilities List by adding or deleting a utility pursuant to a Supplemental Notice; and it is further

ORDERED that the Debtors shall (a) file any Supplemental Notice with this Court, (b) serve a copy of any Supplemental Notice upon each of the Utilities identified in such Supplemental Notice and the Committee by e-mail or fax or (where the Debtors do not have the e-mail address or fax number for a Utility) by first-class mail and (b) post any Supplemental Notice on the Debtors' case information website (located at www.PatriotCaseInfo.com); 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 the counterparties with notice and an opportunity to object and be heard at a hearing; and it is further

ORDERED that the terms and conditions of this Order shall be effective and enforceable immediately upon its entry. This Order shall be deemed to be a final order

with respect to any Utility that does not file a timely objection as described herein; and it is further

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

ORDERED that American Electric Power, Monongahela Power Company, West Penn Power Company, and Hope Gas, Inc., d/b/a Dominion Hope (collectively, the “Objecting Utilities”) timely filed an Objection to the Motion (the “**Objection**”). The Debtors and the Objecting Utilities have agreed that: (a) the Objection shall be treated as an Additional Assurance Request; (b) the Objecting Utilities agree that the Objection to entry of the Order has been resolved; (c) in the event the Debtors and Objecting Utilities cannot resolve the Objecting Utilities’ Additional Assurance Request, (i) the Debtors shall file a motion (the “**Determination Motion**”) pursuant to Section 366 of the Bankruptcy Code and the Case Management Order entered in these Cases on or before September 14, 2012, (ii) the Debtors shall schedule the Determination Motion to be heard at the October 11, 2012 omnibus hearing for these Cases and (iii) the Objecting Utilities deadline to respond to the Determination Motion shall be 4:00 p.m. (prevailing Eastern time) on September 28, 2012; and (d) notwithstanding anything in the Order to the contrary, the Objecting Utilities shall only be prohibited from altering, refusing, or discontinuing service to, or discriminating against, the Debtors for the bases set forth in section 366 of the Bankruptcy Code; and it is further

ORDERED that to the extent that there may be any inconsistency between the terms of the interim or final order approving the DIP Facility, if and when entered, and

this Order, the terms of the interim or final order approving the DIP Facility, as applicable, shall govern; and it is further

ORDERED that this Court retains jurisdiction to hear and determine all matters arising from or related to the implementation and/or interpretation of this Order; 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 agreement pursuant to section 365 of the Bankruptcy Code; and it is further

ORDERED that any period of time prescribed or allowed by this Order shall be computed in accordance with Bankruptcy Rule 9006.

Dated: July 30, 2012
New York, New York

/s/ Shelley C. Chapman
HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE