

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

In re: )  
 )  
PATRIOT COAL CORPORATION, et al. )  
 ) Case No. 12-51502-659  
 ) (Jointly Administered)  
 )  
 ) Chapter 11  
Debtor(s). )  
 )  
 )

**KENTUCKY UTILITIES COMPANY’S OBJECTION  
TO DEBTORS’ 503(b)(9) REPORT**

Kentucky Utilities Company (“KU”), by counsel, respectfully objects to the 503(b)(9) Report filed by the Debtors [Doc. No. 3006]. The sole basis of the Debtors’ contention that KU’s § 503(b)(9) claims should be disallowed is that electricity is not a “good,” which is incorrect as a matter of law. In support of its objection, KU attaches the Declaration of its Industrial Account Manager, Charles D. Lane, CEM, CPQ, as “Exhibit A” and states as follows:

**I. INTRODUCTION AND PROCEDURAL BACKGROUND**

1. On August 2, 2012, prior to the transfer of this case to this honorable Court, the Bankruptcy Court for the Southern District of New York entered an *Order Approving Procedures for the Assertion, Resolution, and Treatment of Reclamation Claims and Claims Asserted Pursuant to 11 U.S.C. § 503(b)(9)* [Doc. No. 261] (the “503(b)(9) Procedures Order”), which set the framework for the assertion of § 503(b)(9) administrative claims and required the Debtors to file a report of any such claims not resolved by February 27, 2013.

2. This case, together with all subsidiary cases administratively consolidated therewith, was transferred to this Court by order dated December 19, 2012 [Doc. No. 1789].

3. Pursuant to the terms of the 503(b)(9) Procedures Order, on December 10, 2012, KU filed the following § 503(b)(9) claims against three separate debtors<sup>1</sup>:

- a. Claim No. 979 against Dodge Hill Mining Company, LLC - \$65,438.83;
- b. Claim No. 980 against Heritage Coal Company LLC - \$107,028.50; and
- c. Claim No. 981 against Highland Mining Company, LLC - \$112,784.88.

Each of these claims arose from KU's sale of electricity to the Debtors during the 20-day period preceding the petition date.

4. The Debtors filed their 503(b)(9) report on February 27, 2013. On page 24 of the Debtors' 503(b)(9) report, the following KU claims were described thusly:

<u>Claim #</u>	<u>Asserted Debtor</u>	<u>Total Claim Asserted</u>	<u>Services, Not Goods</u>	<u>Proposed 503(b)(9) Amount</u>
1580	Dodge Hill Mining Company, LLC	\$65,439	(\$65,439)	\$0
1581	Heritage Coal Company LLC	\$107,029	(\$107,029)	\$0
1582	Highland Mining Company, LLC	\$112,785	(\$112,785)	\$0
2683	Dodge Hill Mining Company, LLC	\$65,439	(\$65,439)	\$0
2684	Heritage Coal Company LLC	\$107,029	(\$107,029)	\$0
2685	Highland Mining Company, LLC	\$112,785	(\$112,785)	\$0

5. The Debtors' numbers identifying KU's § 503(b)(9) claims on its 503(b)(9) Report do not appear to match those of KU's filed proofs of claim (which contain 503(b)(9)

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<sup>1</sup> In addition to its § 503(b)(9) claims, KU also timely filed its proofs of claim for general unsecured claims incurred outside of the 20-day § 503(b)(9) period. Though these claims are not at issue herein, KU hereby expressly reserves any and all rights it has with regard to said claims.

demands), as identified in Paragraph 3. KU filed three § 503(b)(9) claims collectively totaling \$285,283.00; and any additional listing of the same claims on the Debtors' 503(b)(9) Report appears to be the result of miscommunication between the Debtors and their claims agent.

6. As indicated in the 503(b)(9) Report, the Debtors have not disputed: (a) the amount of the claims; (b) that the electricity was sold to the Debtors within the twenty days preceding the petition; or (c) that the Debtors purchased the electricity in the ordinary course of their business. The Debtors' only stated basis for disallowance is its contention that electricity is a service, not a good, and cannot be the subject of a priority claim under § 503(b)(9). KU's § 503(b)(9) claims for its sale of electricity to the Debtors are properly allowable because electricity is a good. KU respectfully requests sufficient time be set aside to permit the parties to propose a joint scheduling order and/or sufficient time to brief the issues for the Court and to prepare for such hearing as the Court might deem appropriate.

## **II. FACTUAL BACKGROUND**

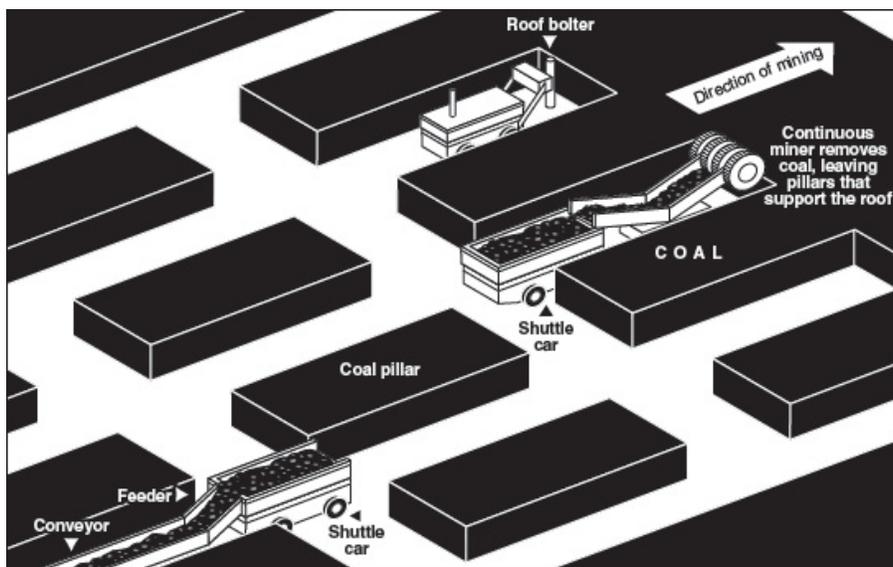
7. KU is in the business of generating, selling, and delivering electrical power throughout most of the Commonwealth of Kentucky to businesses and residences. Three of the debtor companies in this proceeding are located in the Illinois Basin within Union County, Kentucky and purchase necessary electricity from KU. Those companies and the last four digits of their relevant accounts are:

- |    |   |  |
|----|---|--|
| a. | Dodge Hill Mining Company, LLC ("Dodge Hill") | A/C #9793  |
| b. | Heritage Coal Company, LLC ("Heritage")       | A/C #5535<br>A/C #8301<br>A/C #8558<br>A/C #2589 |
| c. | Highland Mining Company, LLC ("Highland")     | A/C #6994  |

8. Dodge Hill, Heritage and Highland purchase massive amounts of electricity from KU. This electricity is then used to operate nearly all aspects of the mines run by these companies; enabling them to remove coal from the ground, prepare it for sale, and move it to a point for transportation.

9. Dodge Hill and Highland each run a single company-operated underground mine utilizing continuous mining methods in Union County, Kentucky and have a single “Transmission Account” with KU, as listed in Paragraph 4. Patriot Coal’s web site provides the following explanation and illustration of the continuous mining process:

Continuous mining is an underground mining method that uses a room and pillar mining system. Coal is removed in a series of 18-20 foot wide areas, leaving columns or pillars to help support the roof. Pillars may later be extracted to maximize the reserve recovery. Shuttle cars or other similar equipment transport coal from the continuous miners at the face to a conveyor belt for transport to the surface.



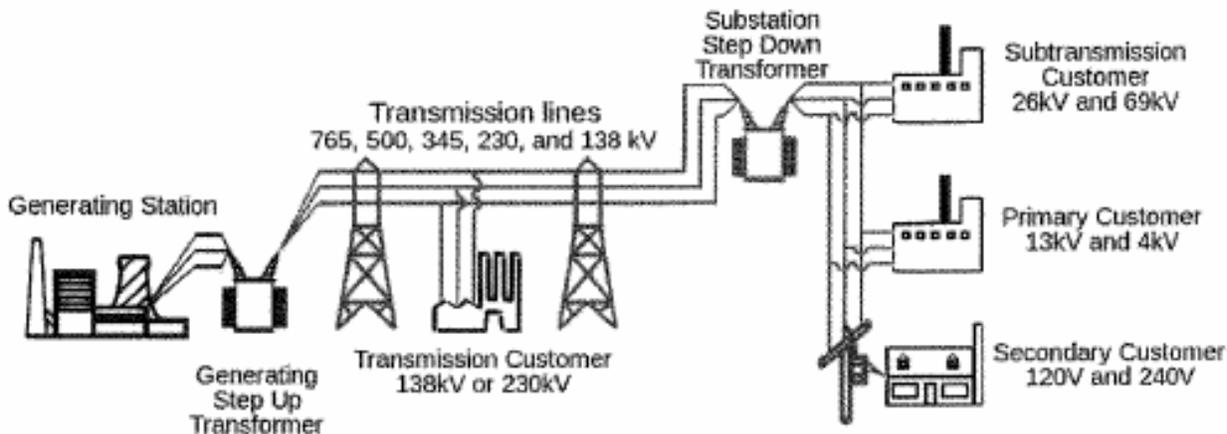
10. In contrast to Dodge Hill and Highland, Heritage has four separate electric accounts and uses the electricity provided by KU to power its coal “prep plant,” where the coal is cleaned, graded, and processed after being mined. Heritage also relies on the electricity from KU to operate its overland belt that carries the processed coal from the prep plant to the river, where

it is then exported to Heritage's customers. Thus, Heritage does not use KU electricity to power its actual mining operations; rather, Heritage utilizes the electricity supplied by KU to power all aspects of its coal preparation plant. By having separate electricity accounts solely for this prep plant, Heritage is able to isolate its "prep costs" from the costs it incurs during the actual mining of the coal, which is in accordance with standard accounting practices in the coal mining industry.

11. Patriot Coal's records do not appear to separately reflect the tonnage mined by each subsidiary company. However, its web site provides the 2010 audited financial statement of the consolidated Debtor entities, which reflects a total of 6,588,000 tons of coal mined in the Illinois Basin mining operations, with an average selling price of \$41.90/ton; amounting to gross revenues of \$276,034,000.

12. The amount of electricity purchased and consumed by Dodge Hill, Heritage and Highland is so substantial that it is important to have some understanding of the process used by KU to initially produce the electricity, how it is delivered, and how it is consumed by the customer. The layman's understanding of electricity (including the undersigned) is limited to the miracle that seems to occur when a switch is flipped at home and the light comes on; or the moment of panic when, during a storm, the lights flicker and then go out. The electrical systems for Dodge Hill, Heritage and Highland are highly complex, and each Debtor has a significant financial investment in the portion of the electrical system it is responsible for.

13. Below is a simple diagram depicting a standard North American electricity grid:



14. At the outset, a power plant and/or generating station purchases and processes raw materials such as coal or natural gas to manufacture electricity. The product is then packaged and delivered to the customer through a process in which the voltage of this electricity is initially “stepped up” to a transmission voltage level, via a Generating Step Up Transformer, and then sent to a transmission tower. KU provides multiple levels of transmission voltages, the highest of which is 500kV.

15. From the transmission tower, the electricity is then transported via transmission lines (which are wires that are functionally similar to pipelines used to transport natural gas from point A to point B) to a Step Down Transformer, where the voltage levels are further customized and reduced, based on the preference of the customer.

16. This process is much like the manner in which natural gas is piped from point A to Point B to reach certain customers, where it is then further customized based on its end usage. Similarly, based on the customer’s instruction and amount of electricity the customer needs to purchase, the Step Down Transformer customizes the voltage of the electricity coming from the transmission line (which is akin to the “main pipeline” used to transport natural gas) to certain predetermined voltage levels.

17. There are two types of electricity accounts the Debtors have with KU. The difference between the two is simply a matter of the customer's necessary voltage level and quantity of electricity consumed. It is possible, and indeed, fairly common, for both types of accounts to exist on the same piece of property.

18. KU's "transmission account customers" purchase their electricity at the "transmission level" (*i.e.*, coming directly off of the transmission line, similar to natural gas customers purchasing directly from a pipeline) and must provide their own Step Down Transformer, where the customers themselves further customize and reduce the voltage of the electricity coming off the transmission line (*i.e.*, "step it down") as their needs require.

19. This type of account is utilized by large-scale, industrial customers who require so much power that it is more cost effective for them to purchase electricity at the transmission level and reduce the voltages to the levels they need, rather than to pay KU the fee for doing so (*i.e.*, to purchase their electricity at the "primary level," after the voltage has already been reduced by KU's own Step Down Transformers). KU has three levels of transmission level voltages; and the meter for this type of account is placed directly on the customer's side of the transmission line where the customer draws their electricity from.

20. By contrast, then, KU "primary account customers" purchase their electricity *after* the voltage has already been reduced to the requested levels by a Step Down Transformer that is owned and operated by KU. Thus, the primary account customer is not responsible for providing its own transformer to reduce the voltage levels on its own; they simply pay a higher rate to KU in exchange for the convenience of KU "stepping down" the voltage for them. This type of account is utilized by customers who are smaller operations and require less electricity. KU provides its primary account customers with three different levels of electricity voltage; and the

meter for this type of account may be placed anywhere on the line after the electricity has been transformed (“stepped down”) to the customer’s requested level.

21. A KU customer with a transmission account is an entity that requires one of two things: either a ready supply of an incredible amount of electricity in order to operate huge equipment, such as machinery capable of melting steel; or a customer that requires flexibility as to where their electricity is ultimately located.

22. For purposes of the Debtors and this case, after the electricity is manufactured, it is transmitted at 69kV (69,000 volts) to Step Down Transformers, which reduce the voltage to lower levels determined by the customer’s needs. The electricity is then consumed in the operation of mine or prep plant. (For instance, the typical voltage required to operate a continuous miner is 995 volts).

23. With respect to the KU accounts that provide electricity to the Debtors’ underground mines and/or prep plants, there is a further moveable component that is controlled by the customer. Once the electricity has been manufactured and passed through the Step Down Transformer, the customer then directs the product to the location within the mine itself where the electricity is actually needed. This is a moving process, as mining shifts from point to point as the mineral is removed, and the process moves on to the next extraction site.

24. The connection point between KU and its customer in the distribution system is called the “point of common coupling,” and it is at this point where the electricity is actually metered and distributed, via wire, to the customer. All electricity sold by KU to the Debtors is metered and further, is moveable at the time it is being metered. At the same time, the electricity is also being consumed by the customer; at which point, KU no longer retains control over the electricity it has manufactured and distributed to the customer.

25. The issue of electricity consumption by the Debtors in the operation of coal mines is put into proper perspective and readily understandable when analogized to the use of gasoline to power a vehicle. Consider electricity to be the same as the gasoline that runs your car. The car will operate as long as it has gasoline, which must be manufactured from raw materials, and then transported to and pumped into the car. When the car runs out of gasoline, it will no longer run.

26. The electricity manufactured and sold by KU is the very thing that allows much of the Debtors' mining operations to function. Lighting in the processing and prep plants is provided by electricity, and the severed mineral itself is moved out of the mine by electric-powered conveyor belt systems. The continuous miner machines, which actually extract the coal mineral from the walls of the mine, all run on electricity. Without the electricity purchased by the Debtor companies, they would be forced to remove coal in the same manner that miners did in the 1920's – by hand, using a pick and shovel. In addition, the pumps that pump out water and prevent the mines from flooding are operated by electricity; and the underground ventilation systems, which are the most critical aspect of the entire mining operation, are wholly powered by electricity. *See Lane Declaration, ¶¶ 24-25.*

27. The electricity powering the ventilation systems is utterly crucial because, without a properly functioning ventilation system, no one can even enter the mine, due to the life-threatening gases and fumes that exist underground. The electric-powered ventilation systems protect the miners' lives by removing these potentially fatal gases and fumes and thus allow them to enter the mines in the first place. These fans remain active for 24 hours a day, seven days a week, in order to maintain the requisite air quality.

28. Without the ventilation system providing fresh air to the miners, the Debtors' companies could not operate their mining businesses at the outset because they would be unable

to send anyone underground at all. As such, the electricity which the Debtors purchase to power the ventilation fans, (which remain constantly running), is tremendously important to the entirety of the Debtors' mining operations. Thus, electricity is wholly essential to the operation of these companies and is indisputably purchased in the ordinary course of the Debtors' business. *See* Lane Declaration, ¶ 26.

### III. LEGAL DISCUSSION

#### A. **Electricity Is a “Good” Pursuant to 11 U.S.C. § 503(b)(9).**

Section 503(b)(9) of the Bankruptcy Code provides, in pertinent part:

[T]here shall be allowed administrative expenses . . . including . . . the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.

11 U.S.C. § 503(b)(9). Thus, the plain language of the above statutory provision grants an administrative priority claim for the value of any “goods” provided to the Debtors during the twenty days prior to their respective petition dates.

The Debtors' 503(b)(9) Report proposes to disallow all of KU's § 503(b)(9) administrative priority claims on a single ground: their contention that the claims are based on services, rather than “goods” as required pursuant to § 503(b)(9). The Debtors' assertion that electricity does not constitute a “good” within the meaning of the Uniform Commercial Code (“UCC”) or § 503(b)(9) is patently incorrect. Electricity is indeed a “good” under the applicable law of the UCC and KU is entitled to § 503(b)(9) administrative priority claims for the value of electricity it manufactured and sold to each Debtor during the 20 days preceding their bankruptcy petitions.

**B. The UCC Definition of “Goods” Applies to Claims Under § 503(b)(9).**

The Bankruptcy Code does not define what constitutes “goods” for § 503(b)(9) purposes. However, the majority of courts hold that the UCC § 2-105 definition of goods applies; and further, that under that definition, electricity constitutes a “good.” Thus, because electricity is a “good” within the purview of the UCC, a utility company is entitled to an administrative priority claim for the value of electricity manufactured and sold to a debtor within the 20 day period preceding the bankruptcy petition. *See, e.g., In re Erving Indus., Inc.*, 432 B.R. 354 (Bankr. D. Mass. 2010).

On appeal from the bankruptcy court, *GFI Wis., Inc. v. Reedsburg Util. Comm’n*, 440 B.R. 791 (W.D. Wis. 2010), explicitly upheld the lower court’s adoption of the UCC’s definition of “goods,” finding it “reasonable to apply the definition provided by the UCC, as courts often do when interpreting Bankruptcy Code provisions.” *Id.* at 797. Section 2-105 of the UCC defines goods as “all things ... which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid ....” Thus, to qualify as a “good” within the parameters of § 503(b)(9), the item must be identifiable, moveable, have value, and be received by the debtor during the 20-day time period preceding the petition date. *Id.* The electricity manufactured and sold to the Debtors by KU satisfies all of these requirements.

**1. Electricity Is Both “Identifiable” and “Moveable” Within The § 503(b)(9) Definition of a “Good.”**

In a factual scenario strikingly similar to the issue presently before this Court, *In re Grede Foundries, Inc.*, 435 B.R. 593 (Bankr. W.D. Wis. 2010), *aff’d*, 440 B.R. 791 (W.D. Wis. 2010), involved a dispute over whether electricity was a “good” entitled to a priority claim pursuant to § 503(b)(9). The parties conceded that their agreement provided that the utility would supply the debtor with electricity, that such usage would be measured by a meter, and that the

debtor would be required to pay for the amount of electricity it used – *i.e.*, the amount recorded by the meter. *Id.* at 595.

The court applied the UCC definition of goods and determined that the electricity was “identified to the contract” at the moment it was metered. *Id.* Judge Martin expressly rejected the debtor’s assertion that at the moment of metering (which is the point at which the electricity was consumed by the debtor), the movement of electrons was “so fast as to be nonexistent” and therefore, the electricity was no longer “moveable”: “[r]egardless of how big the particle or how fast it moves, *it is a good if moveable at the time of identification.*” *Id.* at 596 (emphasis supplied). Finding the electricity to be identifiable at the moment it was metered and simultaneously moveable at that time; the court concluded that electricity satisfied the UCC definition of “goods” and the utility company was entitled to a § 503(b)(9) claim. *Id.*

In reviewing existing authorities, the *Grede Foundaries* court noted that electricity is “more difficult to conceptualize” than the flow of water or natural gas, as it moves at a subatomic level; and that this difference “may explain why some courts have had no trouble designating water and/or natural gas as ‘good’ but characterize electricity as a ‘service.’” *Id.* at 596. However, the court dismissed the rationale of such cases and concluded “there is no principled distinction to be made between natural gas, water, or electricity.” *Id.* Thus, because natural gas and water are both “goods” under the UCC, and electricity also fulfills the UCC definition of a “good,” it is likewise properly afforded the same status.

In affirming the bankruptcy court’s ruling, the district court recognized the complex physical nature of electricity, but clarified that in determining administrative priority under the Code, “the meaning of ‘goods’ should not depend on quantum physics.” *GFI Wisconsin*, 440 B.R. at 799-800. The analysis should involve a “straightforward assessment,” and take into

account the nature and common understanding of the item, in addition to considering any similarities to goods expressly covered by the UCC which receive administrative priority under § 503(b)(9), such as water and natural gas. *Id.* at 800.

As in *Grede Foundaries*, the electricity manufactured by KU and delivered to the Debtors was identifiable, moveable, of value, and received by the Debtors during the 20 day period preceding the petition date.

**2. The General Nature of Electricity Mandates that It Is A “Good” For § 503(b)(9) Purposes.**

In assessing the general physical nature of electricity and its movability, a majority of courts have found that electricity is a “property” or “product” in a variety of contexts. *See id.* (collecting cases). Since electricity is a “product” and/or “property,” it necessarily follows that it is also a “good” within the meaning of § 503(b)(9):

[E]lectricity is movable, tangible and consumable ... it has physical properties, [ ] it is bought and sold in the marketplace and thus, [ ] it qualifies as a good for purposes of the UCC and the Bankruptcy Code. As noted by the bankruptcy court below, *electricity begins flowing through power lines when a circuit is formed and continues moving at least until it is metered. The metering satisfies the identification requirement of the UCC and the movement is sufficient to satisfy the movability requirement, even if it reaches the speed of light.*

*Id.* at 800-01 (citations omitted) (emphasis supplied). *See also, In re S. Mont. Elec. Generation & Transmission Coop., Inc.*, 2013 Bankr. LEXIS 62, \*13 (Bankr. D. Mont. Jan. 8, 2013) (adopting the *GFI Wisconsin* court’s analysis to hold that electricity supplied to the debtor therein was a “good” within the meaning of § 503(b)(9)).

A decision often cited for the position that electricity is not a “good” within the meaning of the UCC or § 503(b)(9) is *In re Pilgrim’s Pride Corp.*, 421 B.R. 231 (Bankr. N.D. Tex. 2009). There, the court concluded that electricity was more similar to the transmission of television,

radio, telephone and internet signals that would not amount to “goods” under the UCC definition. *Id.* at 234. However, the subsequent and well-reasoned *GFI Wisconsin* opinion disagreed with *Pilgrim’s Pride*, noting that electricity, like natural gas or water, is also moveable and likewise can be packaged and handled; for example, in the form of a battery. *GFI Wisconsin*, 440 B.R. at 800.

The *GFI Wisconsin* court further stated that electricity plainly differs from telecommunication signals, as “it is not merely a medium of delivering something else; it is the ‘thing’ the customer seeks to purchase.” *Id.* at 801 (quoting *In re Erving Indus., Inc.*, 432 B.R. 354, 368 (Bankr. D. Mass. 2010)). “[I]t is *those physical properties*, the very nature of electricity, that customers contract to purchase.” *Id.* (emphasis supplied). Unlike telecommunication signals, electricity, as sold by utility companies, must be manufactured from raw materials and does not readily exist in nature.

An examination into the general nature and movability of electricity, common perceptions of electricity and the exchange of electricity as a marketplace commodity all mandate the finding that electricity is a “good” under § 503(b)(9). *GFI Wisconsin*, 440 B.R. at 800. Since it is both identifiable and moving until it reaches the intended customer, electricity is logically considered a “good” under the UCC definition and correspondingly, satisfies the standard set forth in § 503(b)(9). *In re Erving*, 432 B.R. at 370. Therefore, according to the plain language of the statute, KU is entitled to § 503(b)(9) administrative priority claims for the value of the electricity it provided to each of the Debtors within the 20 days prior to the petition date.

#### **IV. CONCLUSION**

WHEREFORE, KU requests that its Objection to the Debtors’ 503(b)(9) Report be duly noted for the record, and further requests that it be afforded an additional 60 day period of time

to negotiate stipulations and an agreed scheduling order with Debtors/counsel and/or to file its fact and legal authorities in support of its claims.

Respectfully Submitted,

/s/ **Stephen H. Rovak**

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**Dentons US LLP**  
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*Counsel for Kentucky Utilities Company*

**CERTIFICATE OF SERVICE**

This is to certify that a true and accurate copy of the foregoing was served on the following interested parties via electronic filing, Federal Express or facsimile, this 29th day of March, 2013:

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/s/ **Emily L. Pagorski**  
Counsel for Kentucky Utilities Company

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# **EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

In re: )  
)  
PATRIOT COAL CORPORATION, et al. )  
) Case No. 12-51502-659  
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Debtor(s). )

**DECLARATION IN SUPPORT OF KENTUCKY UTILITIES  
COMPANY'S OBJECTION TO DEBTORS' 503(B)(9) REPORT**

Comes the Declarant, Charles D. Lane, CEM, CPQ, and, under penalty of perjury and in accordance with 28 U.S.C. § 1746, states as follows, to-wit:

1. In 1986, I received my Bachelor of Science Degree in Electrical Engineering from the University of Kentucky. Since that time, I have been employed by Kentucky Utilities Company ("KU"), in several different engineering positions.

2. In 1998, I completed the requisite coursework and training to receive my Certified Energy Manager ("CEM") designation from the Association of Energy Engineers. Subsequently, in 2004, I completed the requisite coursework and training to receive my Certified Power Quality Professional ("CPQ") designation from the Association of Energy Engineers.

3. I am currently employed by KU as an Industrial Account Manager. In this capacity, my job responsibilities include, among other things, electric sales, gas sales, customized products and services, project management, power quality studies and solutions, harmonics studies and solutions, power factor analysis and correction, tariffs, contracts, leases, energy audits, load studies and distribution coordination, electric and gas technologies.

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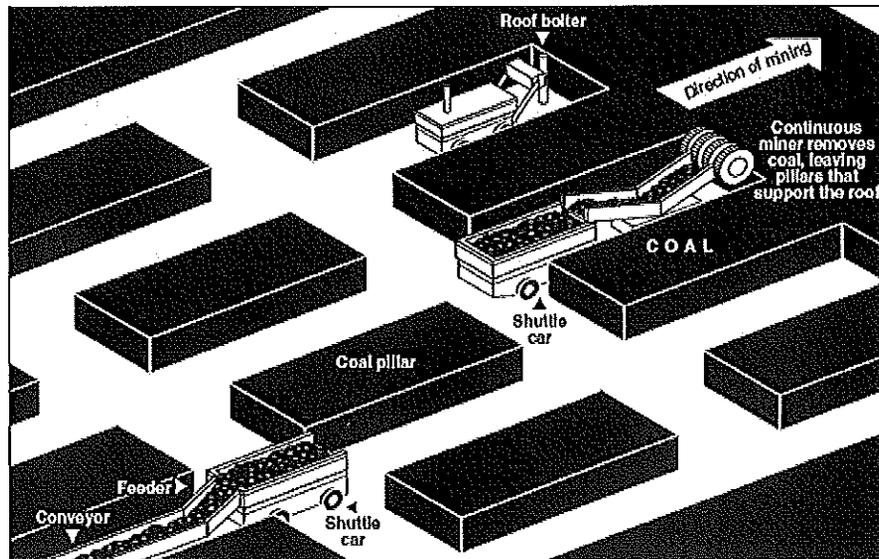
debtor companies in this proceeding are located in the Illinois Basin within Union County, Kentucky, and purchase necessary electricity from KU. Those companies and their relevant accounts are:

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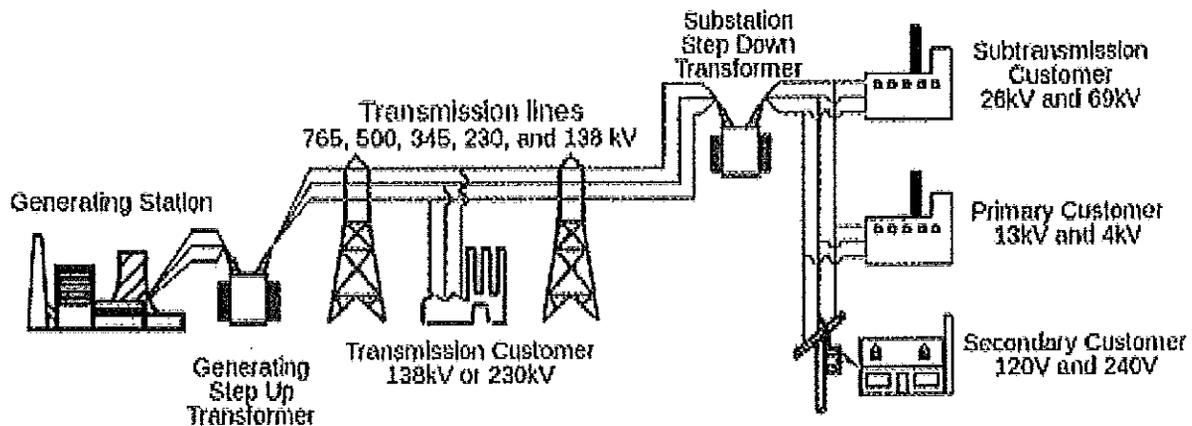


7. In contrast to Dodge Hill and Highland, Heritage has four separate electric accounts and uses the electricity provided by KU solely to power its coal “prep plant,” rather than its actual mining operations. The prep plant is where coal is cleaned, graded and processed after being mined and prior to being transported to the customer. Heritage utilizes the electricity supplied by KU to power all aspects of its prep plant, including general items such as lighting and heating; and further relies on the electricity supplied by KU to operate its overland belt, which physically carries the processed coal from the prep plant to the river, where it is then sent to Heritage customers. By having separate electricity accounts solely for this prep plant, Heritage is able to isolate its “prep costs” from the costs it incurs during the actual mining of the coal, which is in accordance with standard accounting practices in the coal mining industry.

8. Patriot Coal’s records do not appear to separately reflect the tonnage mined by each subsidiary company. However, its web site provides the 2010 audited financial statement of the consolidated Debtor entities, which reflects a total of 6,588,000 tons of coal mined in the Illinois Basin mining operations, with an average selling price of \$41.90/ton; amounting to gross revenues of \$276,034,000.

9. The amount of electricity purchased and consumed by Dodge Hill, Heritage and Highland is so substantial that it is important to have some understanding of the process used by KU to initially produce the electricity, how it is customized and delivered, and how it is ultimately consumed by the customer. The electrical systems for Dodge Hill, Heritage and Highland are highly complex, and each Debtor has a significant financial investment in the portion of the electrical system it is responsible for.

10. The following is a simple diagram depicting a standard North American electricity grid:



11. At the outset, a power plant and/or generating station purchases and processes raw materials such as coal or natural gas to manufacture electricity. The product is then packaged and delivered to the customer through a process in which the voltage of this electricity is initially “stepped up” to a “transmission voltage” level, via a Generating Step Up Transformer, and then sent to a transmission tower. KU provides multiple levels of transmission voltages, the highest of which is 500kV.

12. From the transmission tower, the electricity is then transported via transmission lines (which are wires that are functionally similar to pipelines used to transport natural gas from

point A to point B) to a Step Down Transformer, where the voltage levels are further customized and reduced, based on the preference of the customer.

13. This process is much like the manner in which natural gas is piped from point A to Point B to reach certain customers, where it is then further customized based on its customer's end usage. Similarly, based on the customer's instruction and amount of electricity the customer needs to purchase, the Step Down Transformer customizes the voltage of the electricity coming from the transmission line (which is akin to the "main pipeline" used to transport natural gas) to certain predetermined voltage levels.

14. There are two types of electricity accounts the Debtors have with KU. The difference between the two is simply a matter of the customer's necessary voltage level and quantity of electricity consumed. It is possible, and indeed, fairly common, for both types of accounts to exist on the same piece of property.

15. KU's "transmission account customers" purchase their electricity at the "transmission level" (*i.e.*, coming directly off of the transmission line, similar to natural gas customers purchasing directly from a pipeline) and must provide their own Step Down Transformer, where the customers themselves further customize and reduce the voltage of the electricity coming off the transmission line (*i.e.*, "step it down") as their needs require.

16. This type of account is utilized by large-scale, industrial customers who require so much power that it is more cost effective for them to purchase electricity at the transmission level and reduce the voltages to the levels they need, rather than to pay KU the fee for doing so (*i.e.*, to purchase their electricity at the "primary level," after the voltage has already been reduced by KU's own Step Down Transformers). KU has three levels of transmission level

voltages; and the meter for this type of account is placed directly on the customer's side of the transmission line where the customer draws their electricity from.

17. By contrast, then, KU "primary account customers" purchase their electricity *after* the voltage has already been reduced to the requested levels by a Step Down Transformer that is owned and operated by KU. Thus, the primary account customer is not responsible for providing its own transformer to reduce the voltage levels on its own; they simply pay a higher rate to KU in exchange for the convenience of KU "stepping down" the voltage for them. This type of account is utilized by customers who are smaller operations and require less electricity. KU provides its primary account customers with three different levels of electricity voltage; and the meter for this type of account may be placed anywhere on the line after the electricity has been transformed ("stepped down") to the customer's requested level.

18. A KU customer with a transmission account is an entity that requires one of two things: either a ready supply of an incredible amount of electricity in order to operate huge equipment, such as machinery capable of melting steel; or a customer that requires flexibility as to where their electricity is ultimately located.

19. Despite the fact that KU has different types of accounts, each type of account customer is provided with electricity – the essence of which remains unchanged throughout the entire transformation and customization process. The individual customer's voltage needs simply dictate the level of further customization of the electricity itself, which occurs via the Step-Down Transformer.

20. For purposes of the Debtors and this case, after the electricity is manufactured, it is transmitted at 69kV (69,000 volts) to Step Down Transformers. The Step Down Transformers reduce the voltage to lower levels which are determined by the customer's preference. The

electricity is then consumed in the operation of the mine or prep plant. (For instance, a typical voltage required to operate a continuous miner is 995 volts).

21. With respect to the transmission accounts that provide electricity to the Debtors' underground mines and/or prep plants, there is a further moveable component that is controlled by the customer. Once the electricity has been manufactured and passed through the Step Down Transformer, the customer then directs the product to the location within the mine itself where the electricity is actually needed. This is a moving process, as mining shifts from point to point as the mineral is removed, and the process moves on to the next extraction site.

22. The connection point between KU and its customer in the distribution system is called the "point of common coupling," and it is at this point where the electricity is actually metered and distributed, via wire, to the customer. All electricity sold by KU to the Debtors is metered and further, is moveable at the time it is being metered. At the same time, the electricity is also being consumed by the customer; at which point, KU no longer has any control over the electricity it has manufactured and distributed to the customer.

23. The issue of electricity consumption by the Debtors in the operation of coal mines is put into proper perspective and readily understandable when analogized to the use of gasoline to power a vehicle. Consider electricity to be the same as the gasoline that runs your car. The car will operate as long as it has gasoline, which must be manufactured from raw materials, and then transported to and pumped into the car. When the car runs out of gasoline, it will no longer run.

24. The electricity manufactured and sold by KU is the very thing that allows much of the Debtors' mining operations to function. Lighting in the processing and prep plants is provided by electricity, and the severed mineral itself is moved out of the mine by electric-powered conveyor belt systems. The continuous miner machines, which actually extract the coal

mineral from the walls of the mine, all run on electricity. Without the electricity purchased by the Debtor companies, they would be forced to remove coal in the same manner that miners did in the 1920's – by hand, using a pick and shovel. In addition, the pumps that pump out water and prevent the mines from flooding are operated by electricity; and the underground ventilation systems, which are the most critical aspect of the entire mining operation, are wholly powered by electricity.

25. The electricity powering the ventilation systems is utterly crucial because, without a properly functioning ventilation system, no one can even enter the mine, due to the life-threatening gases and fumes that exist underground. The electric-powered ventilation systems protect the miners' lives by removing these potentially fatal gases and fumes and thus allowing them to enter the mines in the first place. These fans remain active for 24 hours a day, seven days a week, in order to maintain the requisite air quality.

26. Without the ventilation system providing fresh air to the miners, the Debtor companies could not operate their mining businesses because they would be unable to send anyone underground at all. As such, the electricity which the Debtors purchase to power the ventilation fans (which remain constantly running), is tremendously important to the entirety of the Debtors' mining operations. Thus, electricity is wholly essential to the operation of these companies and is indisputably purchased in the ordinary course of the Debtors' business.

I hereby declare, under penalty of perjury, that the foregoing is true and correct.

Dated this, the 28<sup>th</sup> day of March, 2013.

A handwritten signature in cursive script, appearing to read "Charles D. Lane". The signature is written in black ink and is positioned above a horizontal line.

Charles D. Lane, Declarant