

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In Re:)
)
PATRIOT COAL CORPORATION,) **Case No. 12-51502-659**
) **Chapter 11**
Debtors.) **Jointly Administered**

**OBJECTION OF DUKE ENERGY CAROLINAS, LLC TO PROPOSED
CURE AMOUNT IN CONNECTION WITH DEBTORS' ASSUMPTION
OF COAL SALES AGREEMENT**

Duke Energy Carolinas, LLC (“Duke”) hereby objects to the Debtors’ proposed cure amount in connection with the assumption of an Agreement for the Sale and Purchase of Coal effective November 5, 2010 (as amended, if applicable, the “Agreement”) between Duke and Patriot Coal Sales, LLC (“Patriot Coal Sales”), and requests that the Court enter an order requiring the Debtors to pay Duke \$27,461.86 (plus all other amounts which may be due and owing under the Agreement) in connection with the Debtors’ proposed assumption of the Agreement.

In support of this objection, Duke states as follows:

Background

1. Pursuant to Agreement, Patriot Coal Sales is obligated to supply coal to Duke in agreed-upon quantities at agreed-upon prices and locations.
2. The coal supplied to Duke pursuant to the Agreement is delivered to various sites by rail.
3. Pursuant to its agreements with the applicable rail carriers, Duke is required to pay “underweight” charges to the carriers in the event that a railcar contains less than a specified capacity of coal. Pursuant to the Agreement, Patriot Coal Sales is required to reimburse Duke

for these underweight charges, and Duke is permitted to offset these charges against amounts due to Patriot Coal Sales for coal deliveries.

4. On or about September 4, 2013, Duke received an invoice from CSX for underweight charges totaling \$33,946.59. Duke gave notice of these charges to Patriot Coal by letter dated October 14, 2013. Copies of Duke's letter and a summary of the charges are attached as Exhibit A.

5. Patriot Coal Sales has reimbursed Duke for all of these underweight charges except a charge in the amount of \$27,461.86 related to a shipment of coal by CSX on June 28, 2012 (the "CSX Underweight Charge").

6. The only explanation offered by Patriot Coal for its failure to reimburse Duke for the CSX Underweight Charge was that it related to a pre-petition shipment. Duke believes that the CSX Underweight Charge is a post-petition debt incurred in the ordinary course of business that is properly due and payable under 11 U.S.C. § 363(c), in addition to being due and payable in full pursuant to 11 U.S.C. § 365(b) for the reasons set forth below.

Assumption of the Agreement

7. On November 27, 2013, the Debtors filed the Notice of Filing of Plan Schedules and Plan Schedules 9.2(a) and 9.2(b) [docket no. 5074] in connection with the Debtors' Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Plan").

8. Plan Schedule 9.2(a) identifies certain executory contracts to be assumed by the Debtors in connection with the Plan. Included in Plan Schedule 9.2(a) are the Agreement and certain related agreements, including a Confirmation and a Guaranty by the debtor Patriot Coal Corporation.

9. The cure amount proposed by the Debtors in connection with the assumption of the Agreement is \$0.00.

10. Patriot Coal's failure to reimburse Duke for the CSX Underweight Charge is an event of default under the Agreement.

11. 11 U.S.C. § 365(b)(1) provides in relevant part that:

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default; and

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default.

12. In order to cure the default under the Agreement and compensate Duke for its pecuniary loss resulting from the default, the Debtors must pay Duke \$27,461.86 (plus any other amounts which may be due and owing under the Agreement).

WHEREFORE, Duke respectfully requests that the Court enter an Order:

A. requiring the Debtors to pay Duke \$27,461.86 (plus any other amounts which may be due and owing under the Agreement) in connection with the proposed assumption of the Agreement; and

B. granting Duke such other and further relief as the Court deems just and proper.

Respectfully submitted,

DESAI EGGMANN MASON LLC

By: /s/ Robert E. Eggmann
ROBERT E. EGGMANN #37374MO
DANIELLE SUBERI #59688MO
7733 Forsyth Boulevard, Suite 2075
St. Louis, Missouri 63105
(314) 881-0800
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading was served on the persons who participate in the CM/ECF system of the United States Bankruptcy Court for the Eastern District of Missouri this 10th day of December, 2013.

/s/ Robert E. Eggmann



Ted Patterson
Senior Originator
Duke Energy Corporation
576 South Church Street
Charlotte, NC 28202
Ph 704-382-7022
Ted.Patterson@duke-energy.com

October 14, 2013

R. Todd Adkins
500 Lee Street East, Suite 900
Charleston, WV 25301

Re: Agreement for the Sale and Purchase of Coal, effective as of Nov 5, 2010 between Duke Energy Carolinas, LLC and Patriot Coal Corporation ("Coal Purchase Agreement") (DEC PO 28023)

Dear Mr. Adkins:

Duke Energy has become obligated to pay for additional railroad transportation charges that would not have otherwise been incurred but for the loading of the trains attached, below the minimum weight per railcar as specified in the Railroad Specifications referenced in Section 8.6 of the Coal Purchase Agreement. Please reference the attached document for a breakdown of further details date ranges from 6/28/2012 through 8/5/2013. Since the Coal Purchase Agreement allows Duke Energy to recoup these additional charges through netting, as referenced in section 9.4, we will therefore deduct the amount of \$33,946.59 from our next payment, dated November 15, 2013.

If you have any questions regarding this notification, please do not hesitate to call me at 704-382-7022

Sincerely,

A handwritten signature in black ink that reads 'W.T. Patterson'.

W.T. Patterson
Senior Originator
Duke Energy

Duke Energy Carolinas, LLC
Minimum Train Weights due CSX
BY STATION

Station	Commodity	Origin Location	PVT / SYS	Trans Unit Nbr	Ship Date(WB DATE)	Lead Car Number	# of Tons per Car Set	# of Cars Shipped	Stragglers?	Freight Bill #	Waybill #	Minimum Wgt	Governing WOR Party	Weight of Record	Tonnage Diff	Frts Paid	Minimum Wgt Amount Due	Amount Paid CSX	Bal Due	COMMENTS	
Cliffside - 5	DEC 28023 Patriot Federal	FEDERAL MINE 2 WV	PVT	C477	7/28/2013	GGPX001293	114	110	No	47598929	992453	12,540.00	Seller	12,507.65	(32.35)	\$34.78	\$436,141.20	\$435,016.07	\$1,125.13		
Cliffside Unit 5 Total																				\$1,125.13	
Cliffside - Unit 6	DEC 28023 Patriot Federal	FEDERAL MINE 2 WV	PVT	C465	7/18/2013	DKPX730048	114	110	No	47483389	853921	12,540.00	Seller	12,408.50	(131.50)	\$34.78	\$436,141.20	\$431,567.63	\$4,573.57		
Cliffside - Unit 6	DEC 28023 Patriot Federal	FEDERAL MINE 2 WV	PVT	C502	8/5/2013	DKPX200340	114	110	Yes	47691410	855152	12,540.00	Seller	12,517.40	(22.60)	\$34.78	\$436,141.20	\$435,355.17	\$786.03		
Cliffside Unit 6 Total																				\$5,359.60	
Marshall	DEC 27449 Patriot Holbrook CAPP	HOLBROOK (OMAR)	PVT	C682	6/28/2012	TILX047125	114	100	No	42991513	846691	11,400.00	Station	10,294.45	(1,105.55)	\$24.84	\$283,176.00	\$255,714.14	\$27,461.86		
Marshall Total																				\$27,461.86	
Grand Total																				\$33,946.59	

REVIEWED BY: _____ dated _____
Originator

APPROVED BY: _____ dated _____
Transporation, Carolinas Fuel Supply

BREAKDOWN BY STATIONS:	
CLIFFSIDE - UNIT 5	\$1,125.13
CLIFFSIDE - UNIT 6	\$5,359.60
MARSHALL	\$27,461.86
TOTAL	\$33,946.59