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

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 12-[] (___)

(Jointly Administered)

**DEBTORS' MOTION FOR AUTHORIZATION
TO (i) ENTER INTO, PERFORM UNDER, ROLL OVER, ADJUST, MODIFY,
SETTLE, TERMINATE AND ENGAGE IN CERTAIN DERIVATIVE
CONTRACTS AND (ii) PLEDGE COLLATERAL
UNDER CERTAIN DERIVATIVE CONTRACTS**

Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the "**Debtors**") respectfully represent:

Relief Requested

1. By this motion (the "**Motion**"), the Debtors seek authority, but not direction, to (a) continue performing transactions under Prepetition Derivative Contracts

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

and Postpetition Derivative Contracts (each as defined below), including but not limited to entering into, performing under, rolling over, adjusting, modifying, settling and terminating Prepetition Derivative Contracts and Postpetition Derivative Contracts (“**Derivative Contracts Transactions**”), to hedge the Debtors’ risk with respect to fluctuations in certain expenditures and rates, such as the prices of heating oil, ultra-low sulfur diesel fuel, steel, explosives and interest rates, (b) pay any amounts owed under Prepetition Derivative Contracts and Postpetition Derivative Contracts, including prepetition amounts and (c) perform all other actions necessary or appropriate to implement, execute and perform these transactions, including paying premiums, posting letters of credit, entering into escrow agreements, opening and funding escrow accounts, posting collateral, margin or other forms of collateral, making prepayment, taking physical delivery of commodities and effecting settlement (collectively, the “**Ancillary Transactions**”) of Prepetition Derivative Contracts and Postpetition Derivative Contracts.

2. The Debtors furthermore seek an order that the automatic stay be modified pursuant to sections 105 and 362(d)(1) of the Bankruptcy Code to the extent it is necessary to assure Counterparties (as defined below) of their ongoing ability to enforce their contractual and legal rights and remedies against the Debtors pursuant to the terms of any Prepetition Derivative Contract or Postpetition Derivative Contract and applicable non-bankruptcy law. The relief requested herein is consistent with the Debtors’ proposed postpetition credit facility (the “**DIP Facility**”), which is the subject of a motion filed contemporaneously herewith.

Background and Jurisdiction

3. On July 9, 2012 (the “**Petition Date**”), each Debtor commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

5. Additional information about the Debtors’ businesses and the events leading up to the Petition Date can be found in the Declaration of Mark N. Schroeder, Patriot Coal Corporation’s Senior Vice President and Chief Financial Officer, which is incorporated herein by reference.

6. The Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and may be determined by the Court. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

The Debtors’ Use Of Derivatives Contracts

7. The Debtors’ businesses are sensitive to fluctuations in, among other things, the prices of heating oil, ultra-low sulfur diesel fuel, steel and explosives and interest rates. Companies in the Debtors’ industry routinely enter into derivative financial instruments, including derivative contracts, forward contracts, swap contracts, option contracts, or combinations of the foregoing (collectively, “**Derivative Contracts**”)

to manage exposure to the prices of commodities and interest rates. The Debtors routinely entered into such transactions prepetition. They are currently party to prepetition Derivative Contracts relating to heating oil and ultra-low sulfur diesel fuel under the ISDA Master Agreements set forth on Schedule 2 hereto (collectively, the “**Prepetition Derivative Contracts**”).²

8. Postpetition, the Debtors may enter into Derivative Contracts relating to commodities, such as heating oil, ultra-low sulfur diesel fuel, explosives, steel, or relating to interest rates to manage their exposures to the prices of such commodities or to such interest rates (collectively, “**Postpetition Derivative Contracts**” and together with the Prepetition Derivative Contracts, the “**Covered Contracts**”).

9. As a general matter, derivative contracts are financial contracts the values of which are based on, or “derived” from, the price of a traditional security such as a stock or bond, an asset such as a commodity or currency, a market index or measures such as interest rates or currency exchange rates. The Debtors’ ability to hedge their risk of fluctuations in the prices of heating oil, ultra-low sulfur diesel fuel, steel and explosives and in interest rates when it makes business sense to do so is critical to the Debtors’ continued operations. Without the requested relief, the Debtors’ businesses would be exposed to such risks, which could cause grievous harm to the Debtors and their estates.

10. A swap contract obligates each party to the contract to exchange or swap cash flows at specified intervals. For example, an interest rate swap contract might

² The Debtors are also party to certain other prepetition agreements that purport to be forward contracts (the “**Excluded Contracts**”). The Excluded Contracts are explicitly excluded from any and all of the relief sought by the Debtors by this motion. The Debtors do not agree that the Excluded Contracts are or could be Derivative Contracts and reserve all rights with respect thereto.

obligate one party to pay a cash flow calculated by the application of a fixed rate of interest on a hypothetical principal amount, known as a notional amount, while the other party might be obligated to pay a cash flow calculated by the application of a floating rate of interest on the same notional amount.

11. An option contract provides the purchaser the right, but not the obligation, to purchase a security, commodity, an amount of a foreign currency or an asset at a specified price on a specified date. Each of the foregoing types of contracts may be used to hedge (reducing risk) or to speculate on the prices of underlying securities, commodities, currencies, assets or indices.

A. Derivative Contracts Related to Commodities

12. Historically, the Debtors have entered into Derivative Contracts with counterparties (each, a “**Counterparty**”) in the ordinary course of their businesses to reduce existing or expected risks associated with fluctuations in the prices of certain commodities.

13. Fluctuations in the prices of heating oil, ultra-low sulfur diesel fuel, steel and explosives have a particularly significant effect on the Debtors’ operations, due in part to the large amount of those commodities the Debtors purchase. The types of hedges the Debtors will be a party to in any particular year and at any particular time and the actual amounts thereof are dependent on a variety of factors relating to the price of the commodities in question and the relative cost of entering into Derivative Contracts to hedge the Debtors’ exposure to fluctuations. Currently, the Debtors have hedged approximately 47% of their anticipated purchases of diesel fuel (including both heating oil and ultra-low sulfur diesel fuel) for 2012 and approximately 18% of their anticipated

purchases for 2013. As of the Petition Date, the notional amounts outstanding for these swaps included 13.1 million gallons of heating oil expiring December 2012 and 4.0 million gallons of ultra-low sulfur diesel expiring throughout 2013. The Debtors do not currently hedge the risks of fluctuations in the prices of steel or explosives, but may determine in the exercise of their business judgment to do so in the future.

B. Other Possible Derivative Contracts

14. In the ordinary course of their businesses, the Debtors regularly evaluate the need to enter into Derivative Contracts to hedge fluctuations in other types of expenditures. The Debtors do not currently have any Derivative Contracts hedging fluctuations in interest rates. They anticipate, however, that circumstances may arise during these chapter 11 cases that may necessitate the use of Derivative Contracts, such as interest rate swaps, to hedge new types of expenditures.

C. Debtors' Collateral Obligations Under Derivative Contracts

15. It is contemplated that after the Petition Date Covered Contracts will be secured by the collateral, or rolled-up, under the DIP Facility.³ Where the Counterparties require that the Debtors enter into Ancillary Transactions, the Debtors may be required to enter into a contract that secures their obligations to pay under the Derivatives Contracts.

Treatment of Derivative Contracts Under the Bankruptcy Code

16. Recognizing the unique status of forward contracts, futures contracts, swap contracts and option contracts in the financial and commodity markets, Congress added to the Bankruptcy Code certain so-called "safe-harbor" provisions regarding such Derivative Contracts to which a debtor in possession is a party. These provisions

³ To the extent permitted by the DIP Facility, certain Prepetition Derivative Contracts may also be cash collateralized.

generally permit nondebtor Counterparties to Derivative Contracts to exercise certain rights and remedies that are not generally available to other contract counterparties in a bankruptcy case.

17. Among the safe-harbor rights and protections under the Bankruptcy Code are provisions that: (a) allow the nondebtor party to terminate, liquidate and apply collateral held under a Derivative Contract upon a bankruptcy filing, notwithstanding section 365(e)(1) of the Bankruptcy Code, (b) protect prepetition payments made under a Derivative Contract by a debtor to a nondebtor party from the avoidance powers of a trustee or debtor in possession (except in particular cases of actual intent to defraud other creditors) and (c) permit a nondebtor party to set off mutual debts and claims against a debtor under a Derivative Contract without obtaining relief from the automatic stay. *See* 11 U.S.C. §§ 362(b)(6) and (17), 546(e), 548(d)(2)(B) and (D), 553(b)(1), 556, 560.⁴

18. Generally, Derivative Contracts are documented in the form of (a) master agreements, (b) confirmations issued under general terms and conditions, (c) enabling agreements or (d) single transaction agreements (collectively, the “**Transaction Agreements**”). The Transaction Agreements set forth the terms and conditions that govern the transactions entered into between the parties from time to time.

19. Where a master agreement is used, a number of widely used standard forms exist for the types of transactions entered into by the Debtors and the

⁴ The Debtors, by filing this Motion, are not expressing a view as to whether any particular contract is a Derivative Contract or falls within the definitions of contracts in sections 556 or 560 of the Bankruptcy Code or that any particular Counterparty is entitled to exercise rights pursuant to those sections. The Debtors reserve all rights to contest the treatment of any and all contracts alleged to be Derivative Contracts.

Counterparties.⁵ The parties to a master agreement then enter into individual transactions under the master agreements. These individual transactions are customarily documented in the form of confirmations, which set forth, among other terms and conditions, specified quantities and delivery dates for physical transactions, specified methods for calculation of payment amounts and specified payment dates for cash-settled transactions.

**Derivative Contract Provisions For Early
Termination Payments And Termination Payments**

20. Among the safe-harbor rights noted above is the right of a qualifying nondebtor party to terminate a Derivative Contract due to, among other things, the commencement of a bankruptcy case by the other Counterparty. *See* 11 U.S.C. §§ 362(b)(6), 556, 560.

21. Under the Transaction Agreements, proper termination upon the commencement of a bankruptcy case – whether the transactions under the Transaction Agreements are forward contracts, option contracts, swap agreements or otherwise – is typically accomplished by (a) both parties ceasing all further performance under the transactions, (b) the non-defaulting party determining the amounts payable by each party to the other party at the time of termination and (c) the “netting” of the amounts due to and from each party under individual transactions, thereby reaching a net settlement amount payable by one party to the other (the “**Termination Payment**”). Under many Transaction Agreements, a Termination Payment would be payable by either the defaulting party or the non-defaulting party.

⁵ An example of the Master Agreement used by derivative market participants in general and by the Debtors and the Counterparties in particular is the International Swaps and Derivatives Association (ISDA) Master Agreement.

**The Debtors Should Be Authorized To
Continue Transactions Under Derivative Contracts**

A. Authority to Enter into Derivative Contracts

22. The Debtors believe that Derivative Contracts Transactions are within the ordinary course of their businesses, so that they can continue these transactions postpetition. Counterparties may, however, be unwilling to do business with the Debtors without specific authorization from the Court for those transactions.

23. Thus, out of an abundance of caution, the Debtors request that the Court determine that Derivative Contracts Transactions are “ordinary course transactions” within the meaning of section 363(c)(1) of the Bankruptcy Code, or, in the alternative, grant the Debtors authority pursuant to section 363(b)(1) of the Bankruptcy Code to perform Derivative Contracts Transactions in relation to Covered Contracts postpetition.

24. To effectively manage the risks inherent in the Debtors’ businesses, the Debtors must be able to continue Derivative Contracts Transactions postpetition uninterrupted and must be able to maintain the confidentiality of the basic terms of Covered Contracts. Given the confidential and immediate nature of entering into Derivative Contracts, it is impractical and counterproductive to require the Debtors to seek separate approval of each Covered Contract.

B. The Covered Contracts Are Ordinary Course Transactions

25. Section 363 of the Bankruptcy Code provides, in relevant part, that a debtor in possession “may enter into transactions . . . in the ordinary course of business without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1).

Section 363 is designed to serve the ““overriding goal of maximizing the

value of the estate’ by striking the optimal balance between the interests of the debtor and the creditors.” *Habinger, Inc. v. Metropolitan Cosmetic and Reconstructive Surgical Clinic, P.A.*, 124 B.R. 784, 786 (Bankr. D. Minn. 1990) (citing *United States ex rel. Harrison v. Estate of Deutscher*, 115 B.R. 592 (Bankr. M.D. Tenn. 1990)). Moreover, “[t]he ‘ordinary course of business’ standard is intended to allow a debtor the flexibility it needs to run its business and respond quickly to changes in the business climate.” *Habinger*, 124 B.R. at 786.

26. The Debtors believe that Derivative Contracts Transactions are transactions in the ordinary course of their businesses and, accordingly, that they can consummate these transactions without notice and a hearing. See *In re Lavigne*, 114 F.3d 379, 384 (2d Cir. 1997) (holding that “ordinary course of business” is meant to “embrace the reasonable expectations of interested parties of the nature of transactions that the debtor would likely enter in the course of its normal, daily business.”) (quoting *In re Watford*, 159 BR. 597, 599 (M.D. Ga. 1993)); *In re Roth Am., Inc.*, 975 F.2d 949, 952 (3rd Cir. 1992) (stating that section 363 of the Bankruptcy Code is designed to allow a debtor in possession flexibility to engage in ordinary transactions without unnecessary oversight). However, to provide important assurances to existing and potential Counterparties, the Debtors are requesting that this Motion be granted.

27. The Bankruptcy Code does not define “ordinary course of business.” However, “through a synthesis of case law, courts have developed a workable analytical framework for determining whether an activity is within the debtor’s ‘ordinary course of business.’” *In re Husting Land & Dev., Inc.*, 255 B.R. 772, 778 (Bankr. D. Utah 2000), *aff’d*, 274 B.R. 906 (D. Utah 2002); *In re Johns-Manville Corp.*, 60 B.R. 612, 616

(Bankr. S.D.N.Y. 1986), *rev'd on other grounds*, 801 F.2d 60 (2d Cir. 1986). The “reasonable expectations” test was first articulated by the bankruptcy court in the Southern District of New York in *In re James A. Phillips, Inc.* 29 B.R. 391 (Bankr. S.D.N.Y. 1983). That court explained that “[t]he touchstone of ‘ordinariness’ is the interested parties’ reasonable expectations of what transactions the debtor in possession is likely to enter in the course of its business. So long as the transactions conducted are consistent with these expectations, creditors have no right to notice and hearing.” *Id.* at 394.

28. A fundamental characteristic of an “ordinary” postpetition business transaction is its similarity to a prepetition business practice. *In re Nat'l Lumber & Supply, Inc.*, 184 B.R. 74, 79 (B.A.P. 9th Cir. 1995); *James A. Phillips*, 29 B.R. at 394. The size, nature and type of business, and the size and nature of the transactions in question, are all relevant to determining whether the transactions are ordinary. *Harrison*, 115 B.R. at 598; *Johns-Manville*, 60 B.R. at 617. Postpetition Derivative Contracts will generally be the same types as the Prepetition Derivative Contracts, with the same types of parties, a similar size and nature of transactions, and for the same reasons.

29. The Debtors should be authorized to consummate Covered Contracts and any Derivative Contracts Transactions in relation thereto without further order of this Court. Although the Debtors believe that Derivative Contracts Transactions are within the ordinary course of their businesses and that they can consummate these transactions without notice and a hearing, the Debtors request that the Court enter an order authorizing the Debtors to perform Derivative Contracts Transactions in relation to Covered Contracts, in part because certain Counterparties may be unwilling to take any

“risk” on the “ordinary course issue” fearing that any changes to the Derivative Contracts may later be avoided under section 549 of the Bankruptcy Code. Alternatively, if Derivative Contracts Transactions are deemed or determined not to be in the ordinary course of the Debtors’ businesses, then the Debtors request that the Court enter an order pursuant to section 363(b)(1) of the Bankruptcy Code authorizing the Debtors to perform Derivative Contracts Transactions in relation to Covered Contracts.

30. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow the debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Debtors’ decisions to use, sell or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge determining a section 363(b) application must find from the evidence presented before him or her a good business reason to grant such application); *see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting the standard for determining a section 363(b) motion is “a good business reason”).

31. The business judgment rule is satisfied “when the following elements are present: (1) a business decision, (2) disinterestedness, (3) due care, (4) good faith, and (5) according to some courts and commentators, no abuse of discretion or waste of corporate assets.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993) (internal quotations omitted). In fact, “[w]here the debtor

articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in this district have consistently and appropriately been loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence, and will uphold a board's decisions as long as they are attributable to any "rational business purpose." *In re Integrated Res. Inc.*, 147 B.R. at 656.

32. In a long line of well-established cases, federal courts have consistently permitted postpetition payment of certain prepetition obligations where necessary to preserve or enhance the value of a debtor's estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport Ry.*, 106 U.S. 286, 312 (1882) (permitting payment of pre-receivership claim prior to reorganization in order to prevent "stoppage of [crucial] business relations"); *Mich. Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285-86 (S.D.N.Y. 1987), *appeal dismissed*, 838 F.2d 59 (2d Cir. 1988) (approving lower court order authorizing payment of prepetition wages, salaries, expenses and benefits).

33. This "doctrine of necessity" functions in a chapter 11 reorganization as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors' continued operation). The doctrine is

frequently invoked early in a reorganization, particularly in connection with those chapter 11 sections that relate to payment of prepetition claims. The court in *In re Structurelite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988) indicated its accord with “the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to ‘permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.’” The court stated that “a per se rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” *Id.* at 932. Accordingly, pursuant to section 105(a) of the Bankruptcy Code, this Court is empowered to grant the relief requested herein.

34. The Debtors believe that performing Derivative Contracts Transactions represents an appropriate exercise of business judgment. The Debtors believe it is in the best interests of their estates and creditors to have the authority to perform Derivative Contracts Transactions in relation to the Covered Contracts. If authorization is not granted, the Debtors will be at a financial disadvantage vis-à-vis their competitors, and the Debtors will be unable to take advantage of a common industry practice employed to manage costs. More importantly, the inability to hedge fluctuating costs may result in significant additional expenses and adversely affect the Debtors’ restructuring efforts. As such, the Court is authorized to enter an order providing that the Debtors are authorized to perform Derivative Contracts Transactions in relation to the Covered Contracts without further order of the Court.

C. Authority to Pledge Collateral under Derivative Contracts

35. Under certain Covered Contracts, the Debtors may be required in certain circumstances to enter into and perform Ancillary Transactions. The Debtors are concerned that without the express authority to enter into and perform Ancillary Transactions under Covered Contracts, including pledging collateral, posting margin or providing other forms of collateral to the relevant Counterparty, Counterparties may refuse to enter into or continue the relevant Covered Contracts. Therefore, to preserve the value of the Debtors' estates, the Debtors request the express authority to enter into and perform Ancillary Transactions relating to Covered Contracts.

36. Inability to enter into and perform Derivative Contracts Transactions or Ancillary Transactions relating to Covered Contracts could (a) cause disruption to the Debtors' operations and (b) expose the Debtors' ability to successfully reorganize to fluctuations in the prices of heating oil, ultra-low sulfur diesel fuel, steel and explosives and in interest rates and to other market shifts.

37. Any future posting of collateral will not result in any net loss to the Debtors. The Counterparties will realize on their collateral only if the Debtors owe the Counterparties money. The Debtors will owe money to Counterparties for Covered Contracts, and the collateral that will have been posted will be at risk, only when the prices of the commodities or interest rates to which the hedging positions relate become favorable to a Counterparty. In these situations, although the Debtors may owe money on account of Covered Contracts, the Debtors' businesses will have benefited from the favorable prices of the commodities in question or from the favorable interest rates. Consequently, the losses from the Covered Contracts, if any, will be offset by gains in the

Debtors' operations. Thus, the positive significant benefits of the Debtors' derivative strategy can be realized only by the Debtors continuing their prepetition practices.

38. As stated above, performing Derivative Contracts Transactions is within the ordinary course of the Debtors' businesses. Accordingly, entering into and performing Ancillary Transactions under Covered Contracts is also within the ordinary course of the Debtors' businesses. Moreover, the relief requested herein is in the best interest of the Debtors' estates and creditors.

D. Authority for Counterparties to Exercise Rights and Remedies Under Derivatives Contracts

39. The Debtors believe that any Covered Contracts could be enforced against them in accordance with such Derivative Contracts' terms. Nevertheless the Debtors wish to make this clear to Counterparties and request that the automatic stay be modified pursuant to sections 105 and 362(d)(1) of the Bankruptcy Code to the extent it is necessary to assure Counterparties of Counterparties' ongoing ability to enforce their contractual and legal rights and remedies against the Debtors pursuant to the terms of any Covered Contracts and applicable non-bankruptcy law.

40. "In determining whether sufficient cause to modify or lift an automatic stay exists, courts balance the hardship to be imposed on the debtor's estate if the litigation is allowed to proceed against the hardship to be imposed on the moving party if the stay is not lifted." *In re Ionosphere Clubs, Inc.*, 133 B.R. 5, 7 (Bankr. S.D.N.Y. 1991). For all of the business reasons stated above, cause certainly exists for the automatic stay to be modified so that Counterparties will be assured of their ability to enforce their rights under Covered Contracts and so that the Debtors may use the Covered Contracts to reduce their exposure to fluctuations in fuel prices and interest rates.

41. Moreover, courts have granted similar modifications of the automatic stay in other major reorganization cases so that, consistent with the terms of any relevant derivatives contracts, derivatives counterparties may enforce their contractual and legal rights and remedies against the reorganizing companies. *See, e.g., In re UAL Corp., et al.*, Case No. 02-48191 (ERW) (Bankr. N.D. Ill. 2002).

Interim Order

42. The Debtors seek the relief requested in this Motion in the form of the interim order attached hereto (the “**Interim Order**”). Within three business days of the entry of the Interim Order, the Debtors shall serve a copy of the Interim Order and this Motion on (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’ proposed 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) the Counterparties to the Prepetition Derivative Contracts.

43. The Debtors request that the deadline to file an objection (“**Objection**”) to the Motion shall be 4:00 p.m. (prevailing Eastern Time) on a date established by the Court that is at least seven calendar days prior to any hearing scheduled by the Court with respect to the relief sought herein on a final basis (the “**Objection Deadline**”). An Objection shall be considered timely only if, on or prior to the Objection Deadline, it is

(a) filed with the Court and (b) served upon and actually received by (i) the U.S. Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Elisabetta G. Gasparini and Paul K. Schwartzberg, (ii) proposed 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) attorneys for the administrative agents for the Debtors' proposed postpetition lenders, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Marcia Goldstein and Joseph Smolinsky, and Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, Attn: Margot B. Schonholtz and Ana Alfonso and (iv) the attorneys for any official committee of unsecured creditors then appointed in these cases.

44. Unless otherwise ordered by the Court, a reply to an Objection may be filed with the Court and served on or before 12:00 p.m. (prevailing Eastern Time) on the day that is at least two business days before the date of the applicable hearing.

45. If no Objections are timely filed and served as set forth herein, the Debtors shall, on or after the Objection Deadline, submit to the Court a final order granting the relief requested herein, which order shall be submitted and may be entered with no hearing and no further notice or opportunity to be heard afforded to any party. If an Objection is timely filed, a hearing will be held at a date and time to be established by the Court.

46. The foregoing notice procedures satisfy Bankruptcy Rule 9014 by providing the counterparties with notice and an opportunity to object and be heard at a hearing. *See, e.g., In re Drexel Burnham Lambert*, 160 B.R. 729, 734 (S.D.N.Y. 1993) (an opportunity to present objections satisfies due process); *In re Colorado Mountain*

Cellars, Inc., 226 B.R. 244, 246 (D. Colo. 1998) (a hearing is not required to satisfy Bankruptcy Rule 9014). Furthermore, the proposed notice procedures protect the due process rights of the parties in interest without unnecessarily exposing the Debtors' estates to unwarranted administrative expenses.

Necessity for Immediate Relief

47. Bankruptcy Rule 6003 provides that “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” In light of the substantial, immediate and irreparable harm to the Debtors’ business operations that would result if the Debtors are not authorized to perform Derivative Contracts Transactions with respect to certain Covered Contracts, the interim relief requested herein is consistent with Bankruptcy Rule 6003.

Request for Waiver of Stay

48. In addition, by this Motion, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” As set forth above, the Debtors require immediate relief to continue ordinary business operations for the benefit of all parties in interest. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

Notice

49. No trustee, examiner or creditors' committee has been appointed in these chapter 11 cases. The Debtors have served notice of this Motion on (a) the Office of the United States Trustee for the Southern District of New York, (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' proposed 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) the Counterparties to the Prepetition Derivative Contracts.

No Previous Request

50. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief
requested herein and such other and further relief as is just and proper.

Dated: New York, New York
July 9, 2012

By: /s/ Damian S. Schaible

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*Proposed Counsel to the Debtors
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SCHEDULE 1
(Debtor Entities)

1. Affinity Mining Company
2. Apogee Coal Company, LLC
3. Appalachia Mine Services, LLC
4. Beaver Dam Coal Company, LLC
5. Big Eagle, LLC
6. Big Eagle Rail, LLC
7. Black Stallion Coal Company, LLC
8. Black Walnut Coal Company
9. Bluegrass Mine Services, LLC
10. Brook Trout Coal, LLC
11. Catenary Coal Company, LLC
12. Central States Coal Reserves of Kentucky, LLC
13. Charles Coal Company, LLC
14. Cleaton Coal Company
15. Coal Clean LLC
16. Coal Properties, LLC
17. Coal Reserve Holding Limited Liability Company No. 2
18. Colony Bay Coal Company
19. Cook Mountain Coal Company, LLC
20. Corydon Resources LLC
21. Coventry Mining Services, LLC
22. Coyote Coal Company LLC
23. Cub Branch Coal Company LLC
24. Dakota LLC
25. Day LLC
26. Dixon Mining Company, LLC
27. Dodge Hill Holding JV, LLC
28. Dodge Hill Mining Company, LLC
29. Dodge Hill of Kentucky, LLC
30. EACC Camps, Inc.
31. Eastern Associated Coal, LLC
32. Eastern Coal Company, LLC
33. Eastern Royalty, LLC
34. Emerald Processing, L.L.C.
35. Gateway Eagle Coal Company, LLC
36. Grand Eagle Mining, LLC
37. Heritage Coal Company LLC
38. Highland Mining Company, LLC
39. Hillside Mining Company
40. Hobet Mining, LLC
41. Indian Hill Company LLC
42. Infinity Coal Sales, LLC
43. Interior Holdings, LLC
44. IO Coal LLC
45. Jarrell's Branch Coal Company
46. Jupiter Holdings LLC
47. Kanawha Eagle Coal, LLC
48. Kanawha River Ventures I, LLC
49. Kanawha River Ventures II, LLC
50. Kanawha River Ventures III, LLC
51. KE Ventures, LLC
52. Little Creek LLC
53. Logan Fork Coal Company
54. Magnum Coal Company LLC
55. Magnum Coal Sales LLC
56. Martinka Coal Company, LLC
57. Midland Trail Energy LLC
58. Midwest Coal Resources II, LLC
59. Mountain View Coal Company, LLC
60. New Trout Coal Holdings II, LLC
61. Newtown Energy, Inc.
62. North Page Coal Corp.
63. Ohio County Coal Company, LLC
64. Panther LLC
65. Patriot Beaver Dam Holdings, LLC
66. Patriot Coal Company, L.P.
67. Patriot Coal Corporation
68. Patriot Coal Sales LLC
69. Patriot Coal Services LLC
70. Patriot Leasing Company LLC
71. Patriot Midwest Holdings, LLC
72. Patriot Reserve Holdings, LLC
73. Patriot Trading LLC
74. PCX Enterprises, Inc.
75. Pine Ridge Coal Company, LLC
76. Pond Creek Land Resources, LLC
77. Pond Fork Processing LLC
78. Remington Holdings LLC
79. Remington II LLC
80. Remington LLC
81. Rivers Edge Mining, Inc.
82. Robin Land Company, LLC
83. Sentry Mining, LLC
84. Snowberry Land Company
85. Speed Mining LLC
86. Sterling Smokeless Coal Company, LLC
87. TC Sales Company, LLC
88. The Presidents Energy Company LLC
89. Thunderhill Coal LLC
90. Trout Coal Holdings, LLC
91. Union County Coal Co., LLC
92. Viper LLC
93. Weatherby Processing LLC
94. Wildcat Energy LLC
95. Wildcat, LLC
96. Will Scarlet Properties LLC
97. Winchester LLC
98. Winifrede Dock Limited Liability Company
99. Yankeetown Dock, LLC

SCHEDULE 2
(Prepetition Derivative Contracts)

Description of Agreement¹	Date²
ISDA Master Agreement between Société Générale and Patriot Coal Corporation	December 16, 2008
ISDA Master Agreement between Barclays Bank PLC and Patriot Coal Corporation	October 24, 2008
ISDA Master between Citibank, N.A. and Patriot Coal Corporation	March 16, 2009
ISDA Master Agreement between Fifth Third Bank and Patriot Coal Corporation	October 3, 2008

¹ “**Prepetition Derivative Contracts**” shall include all schedules, confirmations and trades entered into in connection with the below ISDA Master Agreements.

² All agreements include any amendments, modifications or supplements related thereto.

EXHIBIT A

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

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 12-[] (___)

(Jointly Administered)

INTERIM ORDER AUTHORIZING DEBTORS TO (i) ENTER INTO, PERFORM UNDER, ROLL OVER, ADJUST, MODIFY, SETTLE, TERMINATE AND ENGAGE IN CERTAIN DERIVATIVE CONTRACTS AND (ii) PLEDGE COLLATERAL UNDER DERIVATIVE CONTRACTS

51. 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**”) to grant the Debtors authority, but not direction, to (a) perform Derivative Contracts Transactions relating to Covered Contracts, (b) pay any prepetition amounts owed under Covered Contracts, (c) enter into and perform Ancillary Transactions relating to Covered Contracts and (d) perform all such actions necessary or appropriate to implement, execute and perform these transactions pursuant to section 363 of the Bankruptcy Code, all 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, filed in support of the Debtors’ first-day pleadings; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant

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.

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’ proposed 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) the Counterparties to the Prepetition Derivative Contracts; and it appearing that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion and having held a hearing with appearances of parties in interest noted in the transcript thereof (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and the Court having determined that the relief requested is necessary to avoid immediate and irreparable harm; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that, pursuant to section 363 of the Bankruptcy Code, the relief

requested in the Motion is hereby granted as set forth herein; and it is further

ORDERED that the Debtors are authorized, but not directed, to continue performance under Prepetition Derivative Contracts, enter into and perform under Postpetition Derivative Contracts and perform any Derivative Contracts Transactions relating to Covered Contracts without further order of the Court; *provided* that, prior to entry of an order granting the relief requested in the Motion on a final basis, the Debtors will not pay any prepetition amount arising under Derivative Contracts Transactions before the applicable due date; and it is further

ORDERED that the Debtors are authorized, but not directed, to pay any prepetition amounts owed under Prepetition Derivative Contracts; and it is further

ORDERED that the Debtors are authorized, but not directed, to enter into and perform any Ancillary Transactions with respect to Covered Contracts without further order of the Court; and it is further

ORDERED that the Debtors are authorized, but not directed, to perform all actions necessary or proper to implement, execute and perform Derivative Contracts Transactions and Ancillary Transactions relating to Covered Contracts without further order of the Court; and it is further

ORDERED that, pursuant to sections 105 and 362(d)(1) of the Bankruptcy Code, the automatic stay is modified to permit Counterparties to exercise their rights and remedies under Covered Contracts in accordance with their terms and to the extent provided by applicable non-bankruptcy law, to:

- (i) take certain actions if an event of default (as defined in the applicable Covered Contract) with respect to the Debtors has occurred and is

continuing, including early termination and liquidation of such contract and Ancillary Transactions;

- (ii) exercise the right to net or setoff certain mutual obligations between the Debtors and the counterparty to the relevant Covered Contract upon the termination and liquidation of such contracts and ancillary transactions;
- (iii) collect from the Debtors amounts that may be owed to them following such netting or setoff; and
- (iv) provide that a Counterparty's rights under the applicable Covered Contract may not be modified, stayed, avoided or otherwise limited by further order of the Court or any court proceeding under the Bankruptcy Code;

and it is further

ORDERED that nothing herein shall be deemed an approval of the assumption or rejection of any Derivative Contracts or Ancillary Transactions pursuant to section 365 of the Bankruptcy Code; and it is further

ORDERED that the relief granted herein shall not apply to the Excluded Contracts; 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 proposed debtor in possession financing, if and when entered, and this Interim Order, the terms of the interim or final order approving the proposed debtor in possession financing, as applicable, shall govern; and it is further

ORDERED that, within three business days of the entry of this Interim Order, the Debtors shall serve a copy of the Interim Order and the Motion on (a) 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' proposed 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) the Counterparties to the Prepetition Derivative Contracts; and it is further

ORDERED that any objection to the relief requested in the Motion on a permanent basis must, by 4:00 p.m. (prevailing Eastern Time) on _____ (the "**Objection Deadline**"), be: (a) filed with the Court and (b) actually received by (i) the U.S. Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Elisabetta G. Gasparini and Paul K. Schwartzberg, (ii) proposed 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) attorneys for the administrative agents for the Debtors' proposed postpetition lenders, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Marcia Goldstein and Joseph Smolinsky, and Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, Attn: Margot B. Schonholtz and Ana Alfonso and (iv) the attorneys for any official committee of unsecured creditors then appointed in these cases; and it is further

ORDERED that a reply to an Objection may be filed with the Court and served on or before 12:00 p.m. (prevailing Eastern Time) on the day that is at least two business days before the date of the applicable hearing; and it is further

ORDERED that if timely objections are received there shall be a hearing on _____, 2012, at _____ (prevailing Eastern Time) to consider such timely objections to the Motion; and it is further

ORDERED that if no Objections are timely filed and served as set forth herein, the Debtors shall, on or after the Objection Deadline, submit to the Court a final order substantially in the form of this Interim Order, which Order shall be submitted and may be entered with no further notice or opportunity to be heard afforded any party, and the Motion shall be approved *nunc pro tunc* to the date of the commencement of these chapter 11 cases; 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; 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 hearing; and it is further

ORDERED that this Court shall retain jurisdiction for all matters arising from or related to the implementation of this Interim Order.

Dated: New York, New York

_____, 2012

UNITED STATES BANKRUPTCY JUDGE