

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:

PATRIOT COAL CORPORATION, et al.,

Debtors.¹

Chapter 11
Case No. 12-51502-659
(Jointly Administered)

Re: ECF No. 2816
Scheduled Hearing: February 26, 2013

**STIPULATION AND ORDER PURSUANT TO SECTIONS 105(a), 363(b)
AND 365(a) OF THE BANKRUPTCY CODE AUTHORIZING AND
APPROVING THE ASSUMPTION OF CERTAIN TRANSLOADING
AGREEMENTS BY DEBTOR PATRIOT COAL SALES LLC**

WHEREAS, on July 9, 2012 (the “**Petition Date**”),² each Debtor commenced with this Court a voluntary chapter 11 case under title 11 of the United States Code (the “**Bankruptcy Code**”) and 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;

WHEREAS, prior to the Petition Date, Debtor Patriot Coal Sales LLC (“**Patriot Sales**”) and Kanawha River Terminals, LLC (“**KRT**”) entered into those certain agreements (the “**Transloading Agreements**”) (i) dated as of October 1, 2010 and titled “Master Transloading and Blending Agreement Ceredo Terminal” and (ii) dated as of

¹ The Debtors are the entities listed on Schedule 1 attached to Patriot Coal Sales LLC’s Motion for Authorization to Assume Certain Transloading Agreements (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.

December 29, 2010 and titled “Transloading and Blending Agreement”, each for transloading, ground storage and blending services (collectively, the “**Transloading Services**”) at certain of KRT’s facilities;

WHEREAS, Patriot Sales and KRT have agreed to enact certain amendments to the Transloading Agreements, each dated as of January 1, 2013 (the “**Transloading Agreement Amendments**”) and Patriot Sales desires to rescind the inclusion of the December 29, 2010 Transloading and Blending Agreement in its Eighth Omnibus Notice of Rejection of Certain Executory Contracts filed on December 18, 2012 [ECF No. 1776];

WHEREAS, Patriot Sales seeks the entry of this Stipulation and Order pursuant to sections 105(a), 363 and 365(a) of the Bankruptcy Code and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure authorizing the assumption of the Transloading Agreements as amended by the Transloading Agreement Amendments (the “**Amended Transloading Agreements**”);

WHEREAS, the Amended Transloading Agreements provide Patriot Sales barge access to both domestic and international markets for thermal and metallurgical coal;

WHEREAS, the Amended Transloading Agreements also provide Patriot Sales market access via the Norfolk Southern railway that would otherwise be inaccessible to Patriot Sales and will further the business operations and interests of Patriot Sales;

WHEREAS, the Transloading Agreement Amendments materially improve Patriot Sales’ position in respect of obtaining Transloading Services from KRT by (i) waiving any right of KRT to payment in respect of shortfalls in use (“**Deficiencies**”) by Patriot Sales in the years 2012 and 2013, resulting in a savings to Patriot Sales of at

least \$1,200,000.00, *provided that* Patriot Sales meet a relatively small usage threshold in 2013; (ii) significantly reducing Patriot Sales' volume commitment to better reflect Patriot Sales' future business plans, and eliminating any distinction between coal transloaded by rail and coal transloaded by barge; and (iii) materially reducing Patriot Sales' payment obligations in respect of Deficiencies for years 2013 through 2017;

WHEREAS, Patriot Sales, after reviewing alternative transloading locations and services, has determined in the exercise of its business judgment that entering into this Stipulation and Order is in the best interests of Patriot Sales, its estates and all creditors and parties in interest;

WHEREAS, Patriot Coal Sales LLC has filed a Motion for Authorization to Assume Certain Transloading Agreements.

NOW, THEREFORE, IT IS HEREBY STIPULATED, ORDERED, AND AGREED, by and between the parties through their undersigned counsel, that:

1. The above recitals are incorporated herein as agreed, approved and so-ordered.
2. Patriot Sales is authorized to assume and does hereby assume the Amended Transloading Agreements in their entirety in accordance with section 365 of the Bankruptcy Code. The assumption of the Amended Transloading Agreements is an exercise of Patriot Sales' sound business judgment and is in the best interest of Patriot Sales and its estate. There are no defaults under the Amended Transloading Agreements that preclude their assumption, and Patriot Sales is hereby deemed to have satisfied all of its obligations under section 365(b)(1) of the Bankruptcy Code with respect to the Amended Transloading Agreements.

3. It is hereby agreed between Patriot Sales and KRT that the cure amount in respect of the Amended Transloading Agreements is \$0 as a result of the pre-assumption payments tendered by Patriot Sales pursuant to that certain letter agreement dated July 25, 2012.

4. Patriot Sales is hereby authorized to execute all documentation reasonably necessary to assume the Amended Transloading Agreements.

5. Patriot Sales is hereby authorized to enter into further renewals of the Amended Transloading Agreements without further order of this Court, and this Stipulation and Order shall govern such renewals.

6. Patriot Sales is hereby authorized to pay its obligations under the Amended Transloading Agreements in accordance with the relevant terms of the Amended Transloading Agreements, without further order of this Court.

7. This Stipulation and Order shall inure to the benefit of and shall be binding on KRT, Patriot Sales, their respective successors in interest and assigns; *provided, however*, that nothing in this Stipulation and Order nor in the Amended Transloading Agreements shall be construed to confer any obligations on any affiliate of Patriot Sales.

8. This Stipulation and Order shall only relate to the matters specifically referenced herein.

9. Notwithstanding the possible applicability of any Bankruptcy Rule, the terms and conditions of this Stipulation and Order shall be immediately effective and enforceable upon its entry.

10. This Stipulation and Order may be signed in counterparts and by facsimile, with each signed counterpart being deemed a part of the original document.

11. This Stipulation and Order may not be modified, altered or amended except by a writing signed by the parties hereto.

SO ORDERED


KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: February 22, 2013
St. Louis, Missouri
jjh

Dated: New York, New York
February 12, 2013

By: /s/ Mark L. Esposito
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