

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

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 12-12900 (SCC)

Jointly Administered

**ORDER ESTABLISHING PROCEDURES FOR THE REJECTION OF
EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND
FOR THE ABANDONMENT OF PERSONAL PROPERTY**

Upon the motion (the “**Motion**”)² of Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) for authorization to establish procedures (the “**Procedures**”) pursuant to (i) sections 105(a) and 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, for the ongoing rejection of Contracts and Leases, and (ii) sections 105(a) and 554(a) of the Bankruptcy Code, for the abandonment of Expendable Property, 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 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

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.

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 and the Hearing (as defined below) having been provided in accordance with the Case Management Order; 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 upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that any objections to the Motion that have not been withdrawn are hereby overruled; and it is further

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

ORDERED that if the Procedures conflict with the Case Management Order, the Procedures shall control with respect to the rejection of executory contracts and unexpired leases and the abandonment of Expendable Property. In all other circumstances, except as otherwise provided by separate order, the Case Management Order shall govern. For the avoidance of doubt, these Procedures shall not apply to any

separate motion filed seeking approval of the rejection of Contracts or Leases or the abandonment of Expendable Property; and it is further

ORDERED that the following Procedures are hereby approved as set forth in this Order and may be implemented in the Debtors' chapter 11 cases:

The Procedures

1. Once the Debtors, in their business judgment, have determined to reject a Contract or Lease or abandon Expendable Property, the Debtors may prepare a written notice (the “**Notice**”) of the Debtors’ intent to reject such Contract or Lease or abandon such Expendable Property. The Notice, which shall be substantially in the form attached hereto as Exhibit A, shall include the following information: (i) the identity of the Debtor parties to each of the Contracts and Leases proposed to be rejected; (ii) the identity of the known counterparties to each such Contract and Lease; (iii) for any Leases of nonresidential real property proposed to be rejected, the location of the real property subject to the Lease proposed to be rejected; (iv) for Expendable Property proposed to be abandoned, a description and location of the Expendable Property and to whom such property shall be abandoned; (v) the date the rejection of each Contract or Lease will become effective; (vi) to the extent known to the Debtors, the permit number of any licenses or permits issued by state regulators under the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1234 *et seq.*, and its implementing regulations, 30 C.F.R. Part 700 *et seq.* (collectively, “**SMCRA**”), licenses or permits issued under the Clean Water Act’s implementing regulations establishing the National Pollutant Discharge Elimination System (“**NPDES**”) and the State Pollutant Discharge Elimination System

(“SPDES”), 40 C.F.R. Part 123 *et seq.*, or licenses or permits issued by the Nuclear Regulatory Commission (“NRC”), in connection with any real property subject to the Lease proposed to be rejected; (vii) to the extent known to the Debtors after reasonable inquiry, the permit number of any applicable and affected permit issued by the State of West Virginia Department of Environmental Protection (a) in connection with any real property subject to the Lease proposed to be rejected or (b) for which any mining or reclamation equipment to be rejected or abandoned is necessary to comply with such coal mining permit; (viii) to the extent known to the Debtors after reasonable inquiry, the identity of any surety provider that has issued a bond securing the Debtors’ performance of its obligations under any coal mining permit issued by any federal, state, or local authority, and the permit number of such coal mining permit, (a) issued with respect to real property subject to the Lease proposed to be rejected or (b) for which any mining or reclamation equipment to be rejected or abandoned is necessary to comply with such coal mining permit; and (ix) a description of any known environmental contamination of real property subject to the Lease proposed to be rejected or Expendable Property proposed to be abandoned that requires reporting to a governmental unit under applicable environmental laws or, if not so required, is reasonably expected to require non-de minimis investigation, remediation or cleanup under applicable environmental laws.

2. The Debtors shall file the Notice with the Court and serve the Notice, along with a copy of this Order, on (i) the known counterparties to the Contracts and Leases to be rejected; (ii) any additional parties known to the Debtors to be entitled to notice pursuant to the terms of the rejected Contracts and Leases; (iii) for Expendable

Property, all parties known to the Debtors as having a direct interest in any Expendable Property proposed to be abandoned; (iv) the Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”); (v) proposed counsel to the official committee of unsecured creditors (the “**Committee**”), Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Adam C. Rogoff, Esq. and Gregory G. Plotko, Esq.; (vi) attorneys for the administrative agents for the Debtors’ postpetition lenders (the “**DIP Agents**”), Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Marcia Goldstein and Joseph Smolinsky, and Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Margot B. Schonholtz and Ana Alfonso; (vii) any surety provider identified in the Notice as having issued a bond relating to any mining permit identified in the Notice (and, to the extent readily known to the Debtor, counsel to such surety provider); (viii) with respect to any equipment known to be owned by General Electric Capital Corporation (“**GECC**”) and leased by any of the Debtors and that is intended to remain on any real property subject to the Lease proposed to be rejected by the Debtors that is known to be subject to a coal permit, GECC; (ix) with respect to any real property subject to the Lease proposed to be rejected that is associated with any SMCRA, NPDES, SPDES and/or NRC licenses or permits or any real property subject to the Lease proposed to be rejected or Expendable Property proposed to be abandoned that is known to be environmentally contaminated and requires reporting to such governmental unit under applicable law or, if not so required, is reasonably expected to require non-de minimis investigation, remediation or cleanup under applicable environmental laws, the

United States Department of Justice; (x) with respect to any property identified in the Notice as having any permit issued by the State of West Virginia Department of Environmental Protection or any real property subject to the Lease proposed to be rejected or Expendable Property proposed to be abandoned that is located in the State of West Virginia and is known to be environmentally contaminated and requires reporting to any governmental unit of the State of West Virginia under applicable law or, if not so required, is reasonably expected to require non-de minimis investigation, remediation or cleanup under applicable environmental law, the State of West Virginia Department of Environmental Protection; and (xi) to the extent otherwise required by applicable law, any state or federal environmental regulatory authority, including, but not limited to, the United States Department of Interior, United States Department of Labor, United States Environmental Protection Agency and United States Nuclear Regulatory Commission.

3. All notices to the United States Department of Justice required by this Order shall be directed by mail and email to the United States Attorney's Office for the Southern District of New York, 86 Chambers Street, Third Floor, New York, New York 10007 (Attn: AUSA Natalie N. Kuehler) (e-mail: natalie.kuehler@usdoj.gov); all notices to the West Virginia Department of Environmental Protection required by this Order shall be directed by mail and email to Bailey & Glasser LLP, 209 Capitol Street, Charleston, West Virginia 25301 (Attn: Kevin W. Barrett and Athanasios Basdekis) (e-mail: kbarrett@baileyglasser.com and tbasdekis@baileyglasser.com); and all notices to GECC required by this Order shall be sent by mail and e mail to Reed Smith LLP, Attn: Michael

J. Venditto, 599 Lexington Avenue, New York, NY 10022 (e-mail:
mvenditto@reedsmith.com).

4. The deadline for the filing of an objection (“**Objection**”) to the proposed rejection of a Contract or Lease or the abandonment of any Expendable Property shall be 4:00 p.m. (prevailing Eastern Time) on the date that is 10 days from the date the Notice is filed and served (the “**Objection Deadline**”). The Objection Deadline may be extended with the written consent of the Debtors.

5. 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) 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’ postpetition lenders, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Marcia Goldstein and Joseph Smolinsky, and Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Margot B. Schonholtz and Ana Alfonso and (iv) proposed counsel to the Committee, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Adam C. Rogoff, Esq. and Gregory G. Plotko, Esq.

6. A reply to an Objection may be filed with the Court and served in accordance with these Procedures on or before 12:00 p.m. (prevailing Eastern Time) on the day that is two days before the date of the applicable hearing.

7. As soon as practicable after the passage of the Objection Deadline, the Debtors shall submit to the Court a proposed order (the “**Proposed Order**”), which Proposed Order shall be entered with no further notice or opportunity to be heard afforded to any party. The Proposed Order shall include the following, as applicable: (i) for rejection of Contracts and Leases where no Objection is filed and the applicable deadline to file an Objection has passed, the Proposed Order shall provide that the Contracts and Leases are rejected as of the date set forth in the applicable Notice for each Contract or Lease or as otherwise agreed by the Debtors and the applicable counterparty to such Contract or Lease, (ii) for the abandonment of Expendable Property, where no Objection is filed and the applicable deadline to file an Objection has passed, the Proposed Order shall provide that the abandonment of Expendable Property is effective as of the effective date of the rejection of the Lease associated with the abandoned Expendable Property and that, unless otherwise specified, the Expendable Property shall be abandoned to the lessor or sublessor party to the Lease associated with such Expendable Property and (iii) for the rejection of Contracts and Leases and abandonment of Expendable Property where an Objection has been filed and resolved by the parties, the Proposed Order shall provide for the rejection of the Contracts and Leases and the abandonment of the Expendable Property in accordance with the agreement of the parties.

8. If an Objection has been timely and properly filed to the proposed rejection of a Contract or Lease or abandonment of Expendable Property, and such Objection has not been resolved by the parties (with notice to counsel to the Committee

and counsel to the DIP Agents), the Debtors may schedule the matter for an omnibus hearing; *provided, however*, that the filing of any such Objection shall not delay the entry of an order authorizing the rejection of any Contract or Lease or the abandonment of any Expendable Property set forth in a Notice for which no Objection has timely been filed.

9. If the disputed rejection or abandonment is approved, the Contract or Lease subject to the Objection shall be deemed rejected as of the date set forth in the applicable Notice for any such disputed Contract or Lease (or as otherwise agreed to by the parties), and the abandonment of Expendable Property subject to the Objection shall be deemed effective as of the effective date of the rejection of the Lease associated with the abandoned Expendable Property.

10. Without further order of this Court, all counterparties to any Contract or Lease are prohibited from setting off or otherwise utilizing any monies deposited by the Debtors with such counterparty as a security deposit or pursuant to another similar arrangement; *provided, however*, that nothing herein shall affect any otherwise valid right of any party, as allowed under applicable law, including the Bankruptcy Code, to draw down on any letter of credit or surety bond securing claims against the Debtors.

11. The holder of any claim for damages arising from the rejection of any Contract or Lease or abandonment of Expendable Property is required to timely file a proof of claim on account of such claim against the Debtors in accordance with any order pursuant to Bankruptcy Rule 3003(c) establishing a deadline for filing prepetition claims (the “**Bar Date**”), on or before the later of (i) the Bar Date or (ii) 30 days after the entry

of an order authorizing the rejection or abandonment to which the claim relates. Any claim not so filed shall be irrevocably barred; and it is further

ORDERED that the Debtors shall be authorized to execute and deliver all instruments and documents, and take such other actions as may be necessary or appropriate to implement and effectuate the Procedures; and it is further

ORDERED that to the extent that there may be any inconsistency between the terms of the final order approving the debtor in possession financing and this Order, the terms of the final order approving the debtor in possession financing shall govern; provided, however, that, to the extent the DIP Agents expressly elect to utilize the procedures set forth in this Order, rather than to file a separate motion as permitted by this Order, they shall comply with the terms of this Order; and it is further

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

ORDERED that entry of this Order shall be without prejudice to the Debtors' rights and the rights of the Debtors' postpetition lenders to seek further, other or different relief regarding the Contracts and Leases or abandonment of Expendable Property; and it is further

ORDERED that nothing herein shall relieve the Debtors of any of their obligations under the Debtors' postpetition lending facility or enlarge the Debtors' rights with respect thereto; and it is further

ORDERED that nothing in this Order: (a) releases, nullifies, precludes or enjoins the enforcement of any liability to a governmental unit under police and regulatory statutes or regulations (including but not limited to environmental or public health laws or regulations), and any associated liabilities for penalties, damages, cost recover, or injunctive relief that any entity would be subject to as the owner, lessor, lessee, controller or operator of property that is transferred pursuant to this Order; (b) diminishes the obligation of any entity, including the Debtors or the transferees, to comply with applicable environmental or public health laws; (c) authorizes the transfer of any licenses, permits, registrations or governmental authorizations and approvals without compliance with all applicable legal requirements under law governing such transfers; or (d) limits the United States of America through the U.S. Department of the Interior's Office of Surface Mining ("OSM") from taking appropriate action to (i) take enforcement actions pursuant to 30 C.F.R. Parts 842 and 843; (ii) pursue the individuals who owned or controlled the Debtors through alternative enforcement actions under 30 C.F.R. Part 847; and (iii) link the Debtors' owners or controllers to violations on OSM's Applicant Violator System; and it is further

ORDERED that nothing in this Order shall be deemed to allow the Debtors to abandon real or personal property in violation of any applicable U.S. state or federal laws or regulations, including but not limited to U.S. environmental laws and regulations.

ORDERED that nothing in this Order shall be construed to create for any governmental unit any substantive right that does not already exist under law nor to limit in any respect the Debtors' substantive rights under the Bankruptcy Code; and it is further

ORDERED that any period of time prescribed or allowed by these Procedures shall be computed in accordance with Bankruptcy Rule 9006; and it is further

ORDERED that the Procedures satisfy Bankruptcy Rules 6006 and 6007 and Local Bankruptcy Rules 6006-1(a) and 9006-1; 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 notice and an opportunity to object and be heard at a hearing; and it is further

ORDERED that the description of Expendable Property in the Motion, coupled with the information to be provided on Schedule A to each Notice, satisfy Local Bankruptcy Rule 6007-1.

Dated: August 15, 2012
New York, New York

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

EXHIBIT A

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

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 12-12900 (SCC)

(Jointly Administered)

**NOTICE OF REJECTION OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES AND THE ABANDONMENT
OF PERSONAL PROPERTY**

PLEASE TAKE NOTICE, that on _____, 2012, the United States Bankruptcy Court for the Southern District of New York (the “**Court**”) entered the attached order (the “**Order**”)² approving Procedures for the rejection of Contracts and Leases and for the abandonment of Expendable Property. The Procedures enable Patriot Coal Corporation and those of its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) in the chapter 11 cases that are jointly administered under Case No. 12-12900 (SCC) to reject Contracts and Leases and abandon Expendable Property without further notice.

PLEASE TAKE FURTHER NOTICE, that pursuant to the terms of the Order, unless a written Objection is filed with the Court and served by _____, 2012 in accordance with the terms of the Order, the Contracts and Leases listed on the attached Schedule A shall be rejected pursuant to section 365(a) of the Bankruptcy Code and Expendable Property shall be abandoned pursuant to section 554(a) of the Bankruptcy Code, in each case effective as of the date set forth on Schedule A.

PLEASE TAKE FURTHER NOTICE, that pursuant to the terms of the Order, (a) no counterparties to any Contract or Lease may set off or otherwise use any monies deposited by the Debtors with such counterparty as a security deposit or 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 it in the Order.

to another similar arrangement without prior order of the Court, and (b) the holder of any claim for damages arising from the rejection of any Contract or Lease or abandonment of Expendable Property is required to file a proof of claim on account of such claim against the Debtors in accordance with any order pursuant to Rule 3003(c) of the Federal Rules of Bankruptcy Procedure establishing a Bar Date, on or before the later of (i) the Bar Date and (ii) 30 days after the effective date of such rejection or abandonment to which the claim relates, and that absent a timely filing, such claim shall be irrevocably barred.

PLEASE TAKE FURTHER NOTICE, that if an Objection is timely filed and served in accordance with the Order, and such Objection has not been resolved by the parties, the Debtors may schedule the matter for an omnibus hearing. If, after a hearing, the disputed rejection or abandonment is approved by the Court, the Contracts or Leases subject to the Objection will be deemed rejected as of the date set forth on the attached Schedule A, and the abandonment of Expendable Property subject to the Objection will be deemed effective as of the effective date of the rejection of the Lease associated with the abandoned Expendable Property.

Dated: New York, New York
[], 2012

By: _____
Marshall S. Huebner
Damian S. Schaible
Brian M. Resnick
Michelle M. McGreal

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