

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY

IN RE:

CASE NO. 24-70529

COKING COAL, LLC

CHAPTER 11

DEBTOR

Honorable Gregory R. Schaaf

**LIMITED OBJECTION AND JOINDER OF PENN VIRGINIA OPERATING CO., LLC
TO THE LIMITED OBJECTION OF NATURAL RESOURCE PARTNERS L.P. AND
ACIN LLC TO THE DEBTOR’S MOTION TO (I) APPROVE BIDDING PROCEDURES
AND FORM AND MANNER OF NOTICE OF PROPOSED AUCTION AND SALE, (II)
AUTHORIZE THE DEBTOR TO DESIGNATE A STALKING HORSE BID, (III) SET
HEARING TO CONSIDER APPROVAL OF SALE OF ASSETS OF COKING COAL,
LLC FREE AND CLEAR OF ANY INTEREST, AND (IV) GRANTING RELATED
RELIEF**

Comes now Penn Virginia Operating Co., LLC (“Penn Virginia”), by counsel, and files this Limited Objection to the *Motion to (I) Approve Bidding Procedures and Form and Manner of Notice of Proposed Auction and Sale, (II) Authorize the Debtor to Designate a Stalking Horse Bid, (III) Set Hearing to Consider Approval of Sale of Assets of Coking Coal, LLC Free and Clear of Any Interests, and (IV) Granting Related Relief* [ECF No. 133] (the “Bid Procedures Motion”) and Joinder to the *Limited Objection of Natural Resource Partners L.P. and ACIN LLC to the Debtor’s Motion to (I) Approve Bidding Procedures and Form and Manner of Notice of Proposed Auction and Sale, (II) Authorize the Debtor to Designate a Stalking Horse Bid, (III) Set Hearing to Consider Approval of Sale of Assets of Coking Coal, LLC Free and Clear of any Interest, and (IV) Granting Related Relief* [ECF No. 251] (the “NRP Objection”), and respectfully states as follows.

1. Penn Virginia is a party to two non-residential real property leases with the Debtor: a *Coal Lease* dated November 15, 2021, pursuant to which Penn Virginia granted to the

Debtor certain mining rights subject to a tonnage royalty and other fees owed to Penn Virginia for the certain tracts of land in Wise and Lee Counties, Virginia and a *Ground Lease Agreement* dated July 25, 2023 pursuant to which the Debtor has surface use rights related to the Debtor's Pigeon Creek Facility in exchange for, among other concessions, monthly rental payments. As of the Debtor's petition date, the Debtor owed Penn Virginia approximately \$1,902,498.41 in the aggregate under the Coal Lease and Ground Lease.

2. Penn Virginia objects, primarily, on the following grounds to the relief requested in the Bid Procedures Motion.

3. First, the Debtor requests to have Black Energy Corp. ("Black Energy") designated as a stalking horse bidder and bid based solely on a term sheet without a fully negotiated and executed asset purchase agreement. The "agreement" is not binding and lacks specificity with respect to the terms of any sale (which could change materially between now and any sale hearing thereon). Further, unlike prospective bidders, Black Energy is not obligated to provide the requisite 25% deposit of purchase price, indeed, Black Energy is not required to make any good faith deposit. [Bid Procedures, ¶¶3(e)-(f)]. Nor is Black Energy required to pay cash, at closing, as other bidders are required to do. Instead, Black Energy is allowed to finance its purchase with the existing prepetition lender, over a lengthy period of time.

4. Additionally, there is a dearth of information provided by Black Energy (that would normally be contained in a "fully baked APA and stalking horse bid) to allow creditors and parties in interest, like Penn Virginia, to evaluate Black Energy as a purchaser and potential contract counter-party and operator of the coal mines. The lack of information includes:

- a. No showing of financial wherewithal to close the sale;
- b. No showing of financial wherewithal to pay cure amounts;

- c. No showing of financial or other operating ability to perform post-closing on lease obligations;
- d. No showing of ability to obtain transfers – new issuance of required regulatory permits;
- e. No showing of previous experience owning and operating coal mines.

5. Penn Virginia recognizes that objections to “cure” and “adequate assurance of future performance” are normally reserved for a sale objection and/or a sale hearing, but here, the Debtor’s wholesale failure to present the barest of facts establishing Black Energy as a feasible or realistic purchaser should be concerning to this Court. The Court should not give Black Energy a stamp of legitimacy that often comes with a stalking horse designation.

6. Other of the Debtor’s proposed bid procedures are either designed, or could unintentionally lead, to a chilling effect on other parties from engaging in the auction process. For example, the Debtor’s secured lender, Tacora is given significant approval authority over the auction process. While potential bidders must provide financial information satisfactory to Tacora [Bid Procedures, ¶3(h)]; Tacora also has the right to approve any asset purchase agreement, in its “respective sole discretion”¹, and the “Winning Bidder” (as defined in the proposed *Post-Petition Loan and Security Agreement*) must be acceptable to Tacora in its “respective sole discretion”² all while Tacora has the unfettered right to credit bid. Tacora’s right to credit bid will be Tacora’s protection from any price it deems unacceptable, or it can

¹ Proposed *Post-Petition Loan and Security Agreement*, §1.2 “363 Asset Purchase Agreement” [ECF No. 35-1].

² Proposed *Post-Petition Loan and Security Agreement*, §1.2 “Winning Bidder” [ECF No. 35-1]; §5.8 (Chapter 11 Milestones)(. . . “bid set forth by the Winning Bidder in the Third-Party Asset Purchase Agreement shall be acceptable to the Lender in its sole discretion.”)

otherwise address any concerns with the Court. An absolute veto right will certainly chill any interest from prospective third parties.

7. Lastly, Penn Virginia further incorporates by reference and reserves the right to present at any hearing on the Bid Procedures Motion any arguments raised in objections by other parties filed after this Limited Objection and Joinder.

RESERVATION OF RIGHTS

8. Nothing in this Limited Objection and Joinder is intended to be, nor should be construed as, a waiver by Penn Virginia of any of its rights under any agreement with the Debtor, the Bankruptcy Code, or applicable law.

WHEREFORE, Penn Virginia respectfully requests that the Court (i) deny the Debtor's request to appoint Black Energy as the stalking horse bidder; (ii) deny the secured lender, ability to veto any potential alternative bidders or the "Winning Bidder" in its sole discretion; and (iii) grant such further and other relief to Penn Virginia as is appropriate under the circumstances.

NOTICE OF HEARING

Notice is hereby given that this Limited Objection and Joinder shall be heard on January 23, 2025 at 9:00 a.m. in the United States Bankruptcy Court, Third Floor Courtroom, 100 East Vine Street, Lexington, Kentucky 40507.

Respectfully submitted,

/s/T. Kent Barber

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CERTIFICATE OF SERVICE

This document has been electronically filed and served via the Court's ECF System on January 20, 2025.

/s/ T. Kent Barber, Esq.

Counsel for Penn Virginia Operating Co., LLC