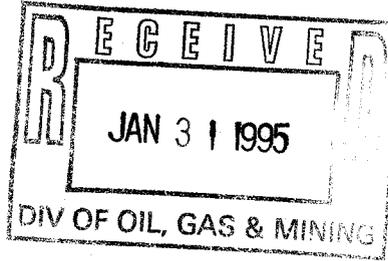


0029



UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re)
SUNNYSIDE COAL COMPANY,)
Debtor.)
Case No. 94 12794 CEM
Chapter 11
MC No. JLS-18

**NOTICE PURSUANT TO LOCAL BANKRUPTCY RULE 202 OF
THE DEBTOR'S MOTION FOR THE SALE OF ASSETS OUTSIDE
THE ORDINARY COURSE OF BUSINESS, FREE AND CLEAR
OF LIENS, OF A HEARING APPROVING THE SALE,
AND OF BIDDING PROCEDURES**

TO ALL PARTIES IN INTEREST:

NOTICE IS HEREBY GIVEN that the movant named below has applied to this Court or is intending to take action as follows:

The Debtor wishes to sell certain real property, including property currently pledged to the Division of Oil, Gas and Mining of the State of Utah ("DOGM"), to Clay and Dan Tucker ("Tucker") in exchange for Tucker's assumption of the Debtor's mined land reclamation obligations, the posting of an \$8.6 million bond acceptable to DOGM to replace the Debtor's reclamation bond, and a cash payment to the Debtor of \$140,000, all pursuant to a Letter of Intent dated January 7, 1995 between the Debtor and Tucker (the "Tucker Letter.") The Debtor has filed a Motion seeking approval of that sale and establishing procedures for the acceptance and approval of offers competitive to the offer made by Tucker. The proposed sale and the procedures for making competitive offers are described below.

BACKGROUND

The Debtor filed its voluntary petition under chapter 11 of the United States Bankruptcy Code on March 25, 1994. The Debtor has operated its business and managed its financial affairs as debtor in possession since that time. Prior to filing its petition, the Debtor operated a coal mine located near Price, Utah. When the Debtor was forced to cease its mining operations, this case was commenced to conduct an orderly liquidation of the Debtor's estate.

The Debtor's most valuable assets consist of real property pledged to DOGM to secure the Debtor's reclamation obligations. Under applicable law, the Debtor will be unable to realize the

value of those assets until it completes its mined land reclamation obligations as required by DOGM and the United States Office of Surface Mining Reclamation and Enforcement ("OSM"), which the Debtor believes could take up to ten years. In addition, there may be no equity available to distribute to creditors at that time. The Debtor believes that the transaction proposed by Tucker, or a substantially similar transaction, is the most effective way for the Debtor to liquidate and realize the value of the assets pledged to DOGM. Therefore, the Debtor proposes a sale of those assets before proposing a chapter 11 plan. The Debtor may file a plan in this case at a later time which would govern the liquidation of the Debtor's remaining assets.

The proceeds of the proposed sale will be held pending determination of the validity, priority, enforceability, and avoidability of any liens claimed on them, for use in administration of the estate, subject to such Orders as the Court has entered and may enter, and ultimately for distribution to creditors in accordance with the Bankruptcy Code.

SALE OF ASSETS

Please take notice that the Debtor is selling the assets described below ("Assets"), pursuant to 11 U.S.C. Secs. 105, 363(b) and (f), free and clear of liens, claims and encumbrances:

- (a) The so-called "Mountain Land," comprised of approximately 23,498 acres of surface land in Carbon, County, Utah, together with all mineral rights and appurtenant water rights;
- (b) The so-called "Grassy Trail Creek Water Rights" (consisting of water right numbers 91-362, 91-367, 91-368, 91-369, 9-28, 91-84, 91-114, 91-125, 91-144, 91-146, 91-178);
- (c) The real property located under the Sunnyside Cogeneration Associates ("SCA") plant;
- (d) all other real property owned by the Debtor, including the mine site and the buildings and fixtures located thereon (except the prep plant and assorted structures, which the Debtor retains the right to salvage and certain above-ground transmission lines); and
- (e) Any other property rights appurtenant or pertaining to the foregoing assets, except equipment and other personal property located

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underground at the mine site, which the Debtor reserves the right to remove.

The Debtor will sell those Assets to Tucker or a competitive bidder pursuant to the following procedures:

a. The undersigned will provide a bid package to any party upon request. All competitive offers must be submitted to the Debtor's counsel in writing and under seal in the form contained in the bid package. Such offers should be submitted no later than 5:00 p.m. on February 28, 1995 and should be the **FINAL AND BEST** offers to be submitted for consideration by the Debtor. The Debtor will not consider any further offers, except pursuant to the procedure for limited further bidding set forth in paragraph (g) below.

b. All offers must be submitted with a refundable earnest money deposit of at least \$50,000, in the form of cash or cash equivalents, to be held by Debtor's counsel pending the results of the Court's hearing on approval of the sale.

c. As reflected in the bid form, all offers must provide, at a minimum, for the posting of a new reclamation bond in a form satisfactory to DOGM and OSM in the amount of \$8.6 million, the assumption of responsibility and liability for reclamation of the Debtor's mine site by the purchaser or the purchaser's designated contractor, performance of reclamation work by a contractor or other person or entity acceptable to DOGM and OSM, the release of all of the Debtor's property from the present reclamation bond, the release of the Debtor and its officers, directors and employees from all reclamation liability, closing conditions and contingencies no more burdensome to the Debtor than those contained in the Tucker Letter, reservation of the Debtor's right to complete the salvage of materials from the prep plant and associated structures and to retain the proceeds of such salvage, reservation of the Debtor's right to recover and retain all personal property and equipment now located underground at the mine site as well as surface transmission lines not reasonably necessary to the purchaser's operations and to retain access to remove such equipment and transmission lines until at least December 29, 1995, and a cash payment to the Debtor at closing of no less than \$240,000.

d. All offers must be accompanied by evidence satisfactory to the Debtor and the Creditors Committee of the offeror's financial and legal ability to perform its obligations at closing, including at least a binding commitment for issuance of a bond acceptable to DOGM and OSM in the amount of \$8.6 million, binding financing commitments for all financing necessary for the offeror to perform its obligations at closing under the terms of the offer unless the offeror submits evidence such as written certification from a financial institution that

the offeror itself already has the necessary funds to perform, evidence (in form of DOGM's acknowledgement in the standard form to be provided to interested purchasers by the Debtor on request) that the contractor or other entity proposed by the offeror to perform reclamation and assume reclamation responsibility is acceptable to DOGM and OSM, and certification of the offeror's willingness and ability to close the transaction within 35 days after entry of the Court's order approving the sale. Any offeror seeking to participate in the limited further bidding provided by paragraph (g) below must be prepared to supplement such evidence at the hearing to demonstrate its ability to perform any higher bid made at the hearing.

e. While the offer itself is to be submitted to Debtor's counsel under seal in accordance with subparagraph a. hereof, the earnest money deposit and evidence of ability to perform set forth in subparagraphs b. and d. hereof shall be submitted with the offer but not under seal.

f. The Debtor will evaluate the sufficiency of the earnest money deposit and the evidence of ability to perform and be prepared to make recommendations to the Court regarding such evidence at the hearing on approval of the sale. Debtor's counsel may share the evidence of ability to perform with counsel for the Creditors Committee, and either counsel may advise any offeror whose evidence is deemed insufficient of what such counsel believes must be done prior to the hearing to remedy such deficiencies. Such offeror may then submit supplemental evidence of its ability to perform no later than 5:00 p.m. on the day before the hearing on approval of the sale, and such supplemental evidence may be considered by the Court as appropriate.

g. The sealed offers submitted to Debtor's counsel shall be opened jointly by counsel for the Debtor and the Creditors Committee on or before March 1, 1995, and such counsel shall inform each offeror of the terms of all other offers on March 1, 1995, but not earlier. At the hearing on approval of the sale Debtor's counsel shall present all of the offers to the Court, which shall disclose their terms in open court, hear statements from interested parties, including offerors, regarding the relative merits of such offers, and determine which offer should be approved. In the event one or more offers have been received from qualified offerors proposing a cash payment of at least \$240,000, at the hearing the Court shall select the best offer submitted by a qualified offeror (the "selected bidder"). Tucker shall then have the opportunity to raise the cash component of his proposal to an amount equal to or greater than that of the selected bidder. If Tucker does so, Tucker and the selected bidder may participate in an auction to be conducted by the Court at the hearing, at which Tucker and the selected bidder will be permitted to continue to bid in minimum increments of \$25,000 over the last high bid (or in such other increments as

the Court may allow). No other offerors shall be permitted to participate in this auction. When bidding has ceased, the Court shall approve the most favorable offer. In determining the most favorable offer, the selected bidder shall prevail if its bid offers a cash component at least \$50,000 greater than Tucker's highest bid. Otherwise, Tucker shall prevail. If the Court finds that all requirements for approval of the sale have been met, the Court shall enter its order approving the sale to the prevailing bidder (or to Tucker under the terms of the Tucker Letter if no qualified sealed offer has been submitted) as promptly as possible at or after the hearing.

h. The successful offeror shall then proceed to close the transaction within 35 days after the Court's entry of its order approving the sale.

i. The Court will approve whichever offer the Court finds to be most beneficial to the estate, provided, however, that such offer must comply with the terms of the bid form and the procedures and requirements established by the Court and set forth in this Notice.

j. Tucker will have the right (but not the obligation) to submit a sealed offer proposing to pay a cash component greater than that set forth in the Tucker Letter. In the event such offer is the best offer submitted and is approved by the Court, Tucker shall be bound by the terms of such offer; provided, however, that in the event Tucker submits such an offer and no other qualified offeror submits an offer containing a cash component greater than that set forth in the Tucker Letter plus \$50,000, the terms of the Tucker Letter shall control and Tucker will not be required to pay the higher cash component contained in its sealed offer.

k. In the event Tucker is not the successful purchaser, Tucker's earnest money will be immediately refunded, and Tucker will be paid a breakup fee of \$50,000 from the proceeds of closing.

Liens, claims, encumbrances and interests of all entities asserting interests in any of the Assets being sold will attach to the proceeds of the sale. Nothing in the Motion to sell the Assets, this Notice, or any other pleading, order, or action taken in connection herewith is a confession or waiver of any of the rights of the Debtor, the Unsecured Creditors Committee, or any other party in interest to investigate and challenge the existence, validity, priority, extent, or avoidability of any claims, encumbrances, liens or interests of entities asserting interests or rights in or against the Assets and the proceeds thereof, all of which rights are explicitly reserved.

HEARING ON SALE OF ASSETS

A hearing on the Debtor's Motion to sell the Assets will be held on March 2, 1995 at 9:30 a.m. (MST) in Courtroom C, United States Bankruptcy Court for the District of Colorado, 721 19th Street, Denver, Colorado 80202. At that hearing, the Court will consider any objections to sale of the Assets as proposed and will entertain qualified, competing bids for the Assets in accordance with the procedures set forth above.

FURTHER INFORMATION

Further information about the Assets, the Debtor, and the pending sale may be obtained from the Debtor's counsel, Jack Smith, Holland & Hart, 555 17th Street, Ste. 2900, Denver, Colorado 80201, (303) 295-8000. The Debtor will furnish to any prospective offeror promptly upon request, a bid package containing copies of the Debtor's Motion with all exhibits, the Order approving sale procedures, and this Notice.

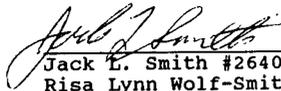
A copy of the Motion requesting the Court to approve the transaction outlined above is available for inspection in the Bankruptcy Court Clerk's office, 721 19th Street, Denver, Colorado 80202 or upon request from the undersigned attorney.

Pursuant to Rule 202 of the Local rules of Bankruptcy Procedure, if you desire to oppose this action, you must file a written objection and request for a hearing with the Court on or before February 24, 1995, and serve a copy thereof on the undersigned attorney; counsel for the Creditors Committee, Caroline C. Fuller, Fairfield & Woods, 1700 Lincoln Street, Suite 2400, Denver, CO 80203; and counsel for Tucker, James T. Burghardt, Moye, Giles, O'Keefe, Vermeire & Gorrall, 1225 17th Street, 29th Floor, Denver, CO 80202. Such objections must be served in such a manner that they are received by counsel for the Debtor, the Creditors Committee and Tucker no later than February 24, 1995. Objections and requests for hearing shall clearly specify the grounds upon which they are based, including the citation of supporting legal authority, if any. General objections will not be considered by the Court.

In the absence of a timely and substantiated objection and request for hearing by an interested party, the Court may approve or grant the aforementioned Motion without any further notice to creditors or other interested parties.

Dated: January 30, 1995.

Respectfully submitted,



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