

C/007/038 Incoming
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*Proposed Attorneys for Debtors
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

Alpha Natural Resources, Inc., et al.,

Debtors.

Chapter 11

Case No. 15-33896 (KRH)

(Jointly Administered)

**FINAL ORDER, PURSUANT TO SECTIONS 363 AND 364
OF THE BANKRUPTCY CODE, (A) AUTHORIZING THE DEBTORS
TO MAINTAIN, CONTINUE AND RENEW THEIR SURETY
BOND PROGRAM AND (B) GRANTING CERTAIN RELATED RELIEF**

This matter coming before the Court on the *Motion of the Debtors, Pursuant to Sections 363 and 364 of the Bankruptcy Code, for Interim and Final Orders (A) Authorizing the Debtors to Maintain, Continue and Renew Their Surety Bond Program and (B) Granting Certain Related Relief* (Docket No. 16) (the "Motion"),¹ filed by the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"); the Court having reviewed the Motion and the First Day Declarations and having considered the statements of counsel with respect to the Motion at a hearing before the Court (the "Hearing"); and the Court having found that

¹ Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

(a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (c) venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409, (d) notice of the Motion and the Hearing was sufficient under the circumstances, (e) the Debtors maintain, continue and renew the Surety Bond Program in the ordinary course of their businesses, (f) sound business reasons exist justifying authorization of the Debtors to continue the Surety Bond Program and (g) there is good cause to waive the 14-day stay imposed by Bankruptcy Rule 6004(h) to the extent that it is applicable; and the Court having determined that the legal and factual bases set forth in the Motion and the First Day Declarations and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, but not directed, to maintain, continue and renew the Surety Bond Program without interruption, including, but not limited to, paying all amounts due and payable postpetition pursuant to the Surety Bond Program, renewing or securing new Surety Bonds, posting collateral and honoring Indemnity Agreements; provided that the Debtors shall not pay any amounts due and payable postpetition that are attributable to the prepetition period in an aggregate amount in excess of \$75,000 absent further order of the Court; provided further that, notwithstanding any of the foregoing, the Debtors shall (a) consult with the official committee of unsecured creditors appointed in the Debtors' chapter 11 cases (the "Committee"), (b) consult with Citibank, N.A., as administrative and collateral agent under the Debtors' proposed postpetition credit facility (the "DIP Agent") and (c) obtain a further order of the Court prior to paying any amount or making any material modification to the Surety Bond Program that, in either case, is outside the ordinary course of the Debtors' businesses and not consistent with the Debtors' past or industry practices; provided further that, to the extent the

Debtors seek to provide collateral in connection with obtaining new Surety Bonds or provide additional collateral for the postpetition renewal of Surety Bonds, the Debtors shall provide such collateral only to the extent permitted under any debtor-in-possession financing facility.

3. Nothing contained in the Motion or this Final Order shall be deemed or construed as: (a) an admission as to the validity or priority of any claim against the Debtors; (b) a waiver of the rights of (i) the Debtors, (ii) the Committee, (iii) the DIP Agent or (iv) any other party in interest to dispute any claim on any grounds; (c) a promise to pay any claim; (d) as a determination that any Surety Bond, Indemnity Agreement or related agreement to which the Debtors are party is an executory contract within the meaning of section 365 of the Bankruptcy Code; (e) a request to assume or reject any executory contract or unexpired lease, pursuant to section 365 of the Bankruptcy Code; or (f) a limitation on the authority of the Debtors to conduct their businesses in the ordinary course without seeking the approval of the Court. Nothing herein renders any claim by any third party based on a prepetition, actual, potential or asserted liability of the Debtors, which claim may or does result in a loss to a surety under the Surety Bond Program, into a postpetition claim or expense of administration. Nothing herein shall preclude any Issuer from asserting any postpetition claim or expense of administration.

4. Financial institutions are (a) authorized, but not directed, to receive, process, honor and pay any and all checks or electronic payment requests related to the Surety Bond Program; provided that sufficient funds are available in the Debtors' accounts to cover such checks and electronic payment requests and (b) authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order, and shall have no duty of further inquiry nor any liability for relying on such representations in following the Debtors' instructions.

5. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfers, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any obligations described in the Motion.

6. Nothing in this Final Order or in the Debtors' debtor-in-possession financing facility shall limit, expand or otherwise modify the Debtors' obligations pursuant to federal, state or local police or regulatory laws or pursuant to 28 U.S.C. § 959(b).

7. Notwithstanding anything herein to the contrary, the entry of this Final Order is without prejudice to, and nothing herein shall constitute a waiver of, expressly or implicitly, the rights, claims and defenses of the Issuers (if any) under: (a) the Indemnity Agreements, Surety Bonds or any related agreements with the Debtors; (b) applicable bankruptcy or non-bankruptcy law; or (c) any related letters of credit, all of which rights are expressly reserved, nor shall it affect the Debtors' rights and defenses (if any) related thereto. Nothing in this Order shall be construed to obligate any Issuer to renew or increase the amount of any existing Surety Bond or to issue any new surety bonds to the Debtors.

8. The failure to specifically describe or include any particular feature of the Surety Bond Program in this Order shall not diminish or impair the effectiveness of such feature.

9. For the avoidance of doubt, nothing herein shall modify, alter or otherwise affect the rights or remedies of the DIP Agent or the lenders under the Debtors' postpetition debtor in possession financing facility or be deemed to authorize the Debtors to violate any terms of such financing facility.

10. Pursuant to Bankruptcy Rule 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.

11. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is hereby waived to the extent necessary.

12. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Final Order.

13. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Final Order.

Dated: Sep 3 2015, 2015
Richmond, Virginia

/s/ Kevin R. Huennekens
UNITED STATES BANKRUPTCY JUDGE

Entered on Docket:9/3/15

WE ASK FOR THIS:

Respectfully submitted,

/s/ Henry P. (Toby) Long, III
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*Proposed Counsel to the Debtors
and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Henry P. (Toby) Long, III