

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:	:	Chapter 11
	:	
FM COAL, LLC, <i>et al.</i> , ¹	:	Case No. 20-02783 (TOM)
	:	
Debtors.	:	Jointly Administered
	:	

**ORDER (I) APPROVING THE ADEQUACY OF THE DISCLOSURE
STATEMENT, (II) APPROVING THE SOLICITATION AND NOTICE PROCEDURES
WITH RESPECT TO CONFIRMATION OF THE FIRST AMENDED JOINT PLAN
OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE,
(III) APPROVING THE FORMS OF BALLOTS AND NOTICES IN
CONNECTION THEREWITH, AND (IV) SCHEDULING
CERTAIN DATES WITH RESPECT THERETO**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of an order (this “Order”), pursuant to sections 105, 363, 1125, 1126, and 1128 of the Bankruptcy Code and Bankruptcy Rules 2002, 3016, 3017, 3018, 3020, approving (a) the adequacy of the Disclosure Statement, (b) the Solicitation and Voting Procedures, (c) the Voting Record Date, (d) the form and manner of the Solicitation Packages and the materials contained therein, (e) the Plan Supplement Notice, (f) the Non-Voting Status Notices, (g) the form of Assumption Notice to counterparties to executory contracts and unexpired leases that the Debtors propose to assume or assume and assign pursuant to the Plan, (h) the Voting and Tabulation Procedures, (i) the Confirmation Hearing Notice, and (j) certain dates and deadlines related thereto, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *General Order of Reference* from the

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: FM Coal, LLC (1768); Cane Creek, LLC (3207); M. S. & R. Equipment Co., Inc. (3487); Cedar Lake Mining, Inc. (6132); Best Coal, Inc. (2487); and Xinergy of Alabama, Inc. (3009).

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

United States District Court for the Northern District of Alabama, dated July 16, 1984, as amended July 17, 1984; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this 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 this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as provided herein.

2. All objections to the Motion that were not resolved by agreement on or prior to the Hearing are overruled or are otherwise moot.

I. Approval of the Disclosure Statement.

3. The Disclosure Statement, substantially in the form attached hereto as **Schedule 1**, is approved as providing holders of Claims entitled to vote on the Plan with adequate information to make an informed decision as to whether to vote to accept or reject the Plan in accordance with section 1125(a)(1) of the Bankruptcy Code.

4. The Disclosure Statement (including all applicable exhibits thereto) provides holders of Claims, holders of Equity Interests, and other parties in interest with sufficient notice

of the injunction, exculpation, and release provisions contained in Article IX of the Plan, in satisfaction of the requirements of Bankruptcy Rule 3016(c).

II. Approval of the Solicitation and Voting Procedures.

5. The Debtors are authorized to solicit, receive, and tabulate votes to accept the Plan in accordance with the Solicitation and Voting Procedures, substantially in the form attached hereto as Schedule 2, which are hereby approved in their entirety.

III. Approval of the Materials and Timeline for Soliciting Votes and the Procedures for Confirming the Plan.

A. Approval of Certain Dates and Deadlines with Respect to the Plan and Disclosure Statement.

6. The following dates are hereby established (subject to modification as necessary) with respect to solicitation of votes on the Plan and confirmation of the Plan (all times prevailing Central Time):

<u>Event</u>	<u>Date</u>
Voting Record Date	November 30, 2020
Solicitation Deadline	December 7, 2020
Plan Objection Deadline	January 5, 2021, at 4:00 p.m., prevailing Central Time
Voting Deadline	January 5, 2021, at 5:00 p.m., prevailing Central Time
Deadline to File Voting Report	January 12, 2021
Deadline to File Confirmation Brief and Confirmation Objection Reply/ Statements in Support of Confirmation	January 21, 2021, at 12:00 p.m., prevailing Central Time
Confirmation Hearing	January 25, 2021, at 10:00 a.m., prevailing Central Time

B. Approval of the Administrative Claims Bar Date.

7. Except as otherwise provided in the Plan, requests for payment of Administrative Claims shall be the first Business Day thirty (30) days after the Effective Date. Holders of Administrative Claims that are required to, but do not, file and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors or their property, and such Administrative Claims will be deemed discharged as of the Effective Date.

A. Approval of the Confirmation Hearing Notice.

8. The Confirmation Hearing Notice, substantially in the form attached hereto as **Schedule 8**, shall be filed by the Debtors and served upon parties in interest in the chapter 11 cases within five business days after the entry of this Order, constitutes adequate and sufficient notice of the hearing to consider approval of the Plan, the manner in which a copy of the Plan could be obtained, and the time fixed for filing objections thereto, in satisfaction of the requirements of the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules.

B. Approval of the Form of and Distribution of Solicitation Packages to Parties Entitled to Vote on the Plan.

9. The forms of the following documents to be included in the Solicitation Packages are hereby approved:

- a. an appropriate form of Ballot substantially in the forms attached hereto as **Schedules 3A** and **3B**, respectively;³
- b. the Cover Letter substantially in the form attached hereto as **Schedule 7**; and
- c. the Confirmation Hearing Notice substantially in the form attached hereto as **Schedule 8**.

³ The Debtors will use commercially reasonable efforts to ensure that any holder of a Claim who has filed duplicate Claims against the Debtors (whether against the same or multiple Debtors) that are classified under the Plan in the same Voting Class receives no more than one Solicitation Package (and, therefore, one Ballot) on account of such Claim and with respect to that Class.

10. The Solicitation Packages provide the holders of Claims entitled to vote on the Plan with adequate information to make informed decisions with respect to voting on the Plan in accordance with Bankruptcy Rules 2002(b) and 3017(d), the Bankruptcy Code, and the Local Rules.

11. The Debtors shall distribute Solicitation Packages to all holders of Claims entitled to vote on the Plan on or before the Solicitation Deadline. Such service shall satisfy the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

12. The Debtors are authorized, but not directed or required, to distribute the Plan, the Disclosure Statement, and this Order to holders of Claims entitled to vote on the Plan in electronic format (i.e., on a CD-ROM or flash drive). The Ballots, as well as the Cover Letter and the Confirmation Hearing Notice, will *only* be provided in paper form. On or before the Solicitation Deadline, the Debtors shall provide (a) complete Solicitation Packages to the Bankruptcy Administrator and (b) the Solicitation Procedures Order (in electronic format) and the Confirmation Hearing Notice to all parties on the 2002 List as of the Voting Record Date.

13. Any party that receives materials in electronic format, but would prefer to receive materials in paper format, may contact the Notice and Claims Agent and request paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense).

14. The Notice and Claims Agent is authorized to assist the Debtors in (a) distributing the Solicitation Package, (b) receiving, tabulating, and reporting on Ballots cast to accept or reject the Plan by holders of Claims against the Debtors, (c) responding to inquiries from holders of Claims and Equity Interests and other parties in interest relating to the Disclosure Statement, the Plan, the Ballots, the Solicitation Package, and all other related documents and matters related

thereto, including the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan, (d) soliciting votes on the Plan, and (e) if necessary, contacting creditors regarding the Plan.

15. All votes to accept or reject the Plan must be cast by using the appropriate Ballot. All Ballots must be properly executed, completed, and delivered according to their applicable voting instructions by: (a) first class mail, in the return envelope provided with each Ballot, (b) overnight delivery, (c) personal delivery, or (d) electronic mail so that the Ballots are *actually received* by the Notice and Claims Agent no later than the Voting Deadline as set forth in the applicable Ballot.

C. Approval of Notice of Filing of the Plan Supplement.

16. The Debtors are authorized to send notice of the filing of the Plan Supplement, which will be filed and served at least seven (7) days prior to the Voting Deadline, substantially in the form attached hereto as **Schedule 9**, on the date the Plan Supplement is filed pursuant to the terms of the Plan, or as soon as practicable thereafter.

D. Approval of the Form of Notices to Non-Voting Classes.

17. Except to the extent the Debtors determine otherwise, the Debtors are not required to provide Solicitation Packages to holders of Claims or Equity Interests in Non-Voting Classes, as such holders are not entitled to vote on the Plan. Instead, on or before the Solicitation Deadline, the Notice and Claims Agent shall mail (first-class postage prepaid) a Non-Voting Status Notice in lieu of Solicitation Packages, the form of each of which is hereby approved, to those parties, outlined below, who are not entitled to vote on the Plan:

<u>Class(es)</u>	<u>Status</u>	<u>Treatment</u>
1, 2, 6	Unimpaired—Presumed to Accept	Will receive a Non-Voting Status Notice, substantially in the form attached to the Solicitation Procedures Order as <u>Schedule 4</u> , in lieu of a Solicitation Package.
5, 7	Impaired—Deemed to Reject	Will receive a Non-Voting Status Notice, substantially in the forms attached to the Solicitation Procedures Order as <u>Schedule 5</u> , in lieu of a Solicitation Package.
N/A	Disputed Claims	Holders of Claims that are subject to a pending objection by the Debtors are not entitled to vote the disputed portion of their Claim. As such, holders of such Claims will receive a notice, substantially in the forms attached to the Solicitation Procedures Order as <u>Schedule 6</u> (which notice shall be served together with such objection).

18. The Debtors are not required to mail Solicitation Packages or other solicitation materials to the following: (a) holders of Claims that have already been paid in full during the chapter 11 cases or that are authorized to be paid in full in the ordinary course of business pursuant to an order previously entered by this Court, or (b) any party to whom the notice of the hearing on this Disclosure Statement was sent but was subsequently returned as undeliverable.

E. Approval of Notices to Contract and Lease Counterparties.

19. The Debtors are authorized to include the Assumption Notice and Schedule of Assumed Executory Contracts and Unexpired Leases, which shall include the Debtors' designated proposed Cure Claim, with the Plan Supplement and serve the Plan Supplement on all counterparties to executory contracts and unexpired leases.

F. Approval of the Procedures for Filing Objections to the Plan.

20. Objections to the Plan will not be considered by the Court unless such objections are timely filed and properly served in accordance with this Order. Additionally, all objections to

confirmation of the Plan or requests for modifications to the Plan, if any, ***must***: (a) be in writing, (b) conform to the Bankruptcy Rules, (c) state, with particularity, the legal and factual basis for the objection and, if practicable, a proposed modification to the Plan (or related materials) that would resolve such objection, and (d) be filed with the Court (contemporaneously with a proof of service) and served upon the notice parties identified in the Confirmation Hearing Notice. Furthermore, any objection to the Plan (even if timely filed) may be overruled or considered waived if the objecting party fails to appear at the Confirmation Hearing.

IV. Miscellaneous.

21. The Debtors reserve the right to modify the Plan without further order of the Court in accordance with Article XI of the Plan, including the right to withdraw the Plan as to an individual Debtor at any time before the Confirmation Date.

22. Nothing in this Order shall be construed as a waiver of the right of the Debtors or any other party in interest, as applicable, to object to a proof of claim at any time.

23. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

24. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

25. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

26. The Debtors and the Notice and Claims Agent are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

27. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: December 1, 2020
Birmingham, Alabama

/s/ Tamara O. Mitchell
THE HONORABLE TAMARA O. MITCHELL
UNITED STATES BANKRUPTCY JUDGE