

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
CLOUD PEAK ENERGY RESOURCES	)	
LLC, DEBTOR-IN-POSSESSION	)	Application No. 0008670548
	)	
Petition for Waiver of Section 1.1102	)	
of the Commission's Rules in Connection	)	
with Application Filing Fees Associated	)	
with <i>Pro Forma</i> Application for	)	
Involuntary Assignment for Various	)	
Wireless Licenses Pursuant to Section	)	
1.1119 of the Commission's Rules;	)	
	)	
Request for Deferral of Payment of	)	
Application Filing Fees Pursuant to	)	
Section 1.1119 of the Commission's	)	
Rules and, in the Alternative, Waiver	)	
of Section 1.1119(e) of the Commission's	)	
Rules Pursuant to Section 1.3 of the	)	
Commission's Rules	)	
Rules	)	

To: Office of the Managing Director

**PETITION FOR WAIVER OF APPLICATION  
FILING FEES AND DEFERRAL OF PAYMENT**

Cloud Peak Energy Resources LLC, Debtor-in-Possession ("Cloud Peak-DIP") through counsel and pursuant to Section 1.1119 of the Commission's Rules, 47 C.F.R. §1.1119, hereby requests a waiver of Section 1.1102 of the Commission's Rules, 47 C.F.R. §1.1102. In support thereof, the following is shown:

Section 1.1102 of the Commission's Rules requires the payment of application filing fees in connection with various applications. In this case, Cloud Peak-DIP has filed an application for *pro forma*, involuntary assignment of the licenses (the "Application"). The accompanying

Application was filed on June 12, 2019 and has been assigned FCC File Number 0008670548. The Application was necessitated by the May 14, 2019 bankruptcy filing by Cloud Peak Energy Resources LLC (“Licensee”) which resulted in Cloud Peak-DIP’s Debtor-in-Possession status. Licensee holds various wireless licenses used in connection with its operations as a commercial coal producer and sustainable fuel supplier.

In addition, pursuant to Section 1.1119(e) of the Commission’s Rules, 47 C.F.R. §1.1119(e), Cloud Peak-DIP requests deferral of the obligation to pay the application filing fees upon filing of the Application, pending the Managing Director’s ruling on the application fees Waiver Request. In the alternative, to the extent the Commission determines that Section 1.1119(e) does not expressly authorize deferral of the application fee, Cloud Peak-DIP requests that the Commission waive any requirement to pay the application filing fees pending action by the Managing Director on Cloud Peak-DIP’s Waiver Request.

## **I. BACKGROUND**

Cloud Peak Energy Resources LLC filed a voluntary petition for bankruptcy in the United States Bankruptcy Court, District of Delaware, on May 14, 2019. Twenty-seven affiliated entities also filed voluntary petitions for bankruptcy in that same proceeding. A copy of the bankruptcy filing is attached hereto. With these filings, Licensee and other affiliated entities began operating their businesses as “debtors-in-possession” pursuant to 11 U.S.C. §§ 1101(1) and 1107(a). Licensee holds land mobile licenses in connection with its operation as a commercial coal producer and sustainable fuel supplier.

## **II. REQUEST FOR WAIVER AND DEFERRAL OF FILING FEES**

### **A. Waiver of Filing Fees is in the Public Interest**

Cloud Peak-DIP requests that it not be required to pay the substantial application filing fees that are associated with the Application. Section 1.1119 of the Commission’s Rules provides that application filing fees may be “waived or deferred in specific instances where good

cause is shown and where waiver or deferral of the fee would promote the public interest.”<sup>1</sup> Accordingly, Cloud Peak-DIP requests relief under this provision of the Commission’s Rules.

The Commission has previously determined that bankruptcy constitutes “good cause” pursuant to Section 1.1119. In *Mobile Media Corporation, et al.*, Memorandum Opinion and Order, 14 FCC Rcd 8017, 8027 (1999), the Commission waived filing fees under Section 1.1119 for applications associated with the reorganization of a bankrupt paging carrier. The Commission found that the paging carrier’s bankruptcy was “good cause” for waiver of the application filing fees. The Commission held that “waiver of the fee will serve the public interest by enabling [the carrier] to preserve assets that will accrue to innocent creditors.” *Mobile Media*, 14 FCC Rcd at 8027; *see also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, Memorandum Opinion and Order, 10 FCC Rcd 12759, 12762 (1995) (“evidence of bankruptcy or receivership sufficient to establish financial hardship for purposes of waiving of regulatory fees”); *United Air Lines, Inc.*, DA-03-1741, released May 22, 2003; *Commco Technology, LLC*, DA-03-1741, released May 22, 2003; *In the Matter of Daniel R. Goodman, Receiver, Dr. Robert Chan, Petition for Waiver of Sections 90.633(c) and 1.1102 of the Commission’s Rules*, Memorandum Opinion and Order, FCC 95-211 (rel. May 24, 1995); *LaRose V. FCC*, 494 F.2d 1145, 1146 n.2 (D.C. Cir. 1974) (Commission has responsibility to harmonize policies with federal bankruptcy law).

Cloud Peak-DIP’s bankruptcy likewise warrants waiver of the filing fees associated with the Application. *See Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965). As set forth above, Licensee has filed for a Chapter 11 bankruptcy request and has been awarded debtor-in-possession status. In the absence of a waiver, the parties will be required to pay a total of \$ 3660.00 for this Application and a total of \$ 6870.00 for all bankruptcy-related applications to the Commission. Pursuant to Commission precedent, the financial burden should be avoided because of the bankruptcy, particularly because the Application is for a *pro forma* transaction not involving any real change in control of the Licensee. Grant of this waiver would preserve funds better used to sustain operations. Accordingly, Cloud Peak-DIP requests a grant of a waiver under Section 1.1119 of the Commission’s Rules.

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<sup>1</sup> 47 C.F.R. § 1.1119(a)

### **B. Deferral of Filing Fees is in the Public Interest**

Section 1.1119(e) of the Commission's Rules requires that a carrier requesting deferral or waiver of application filing fees under Section 1.1119 submit the specified application filing fees or request a deferral in a filing with the Managing Director. The circumstances of financial hardship that justify the issuance of the waiver requested above also justify the deferral of payment of the filing fees pending the Managing Director's ruling on Cloud Peak-DIP's Waiver Request. In the alternative, if the Commission determines that Section 1.1119(e) does not expressly provide for the deferral of the filing fees, Cloud Peak-DIP requests that the Commission defer payment of the filing fees pursuant to the Commission's general waiver provisions in Section 1.3 of the Commission's Rules. *See WAIT Radio v. FCC*, 418 F.2d 1153 (D.C.Cir. 1969).

### **III. CONCLUSION**

For the foregoing reasons, Cloud Peak-DIP respectfully requests that the Commission GRANT this petition for waiver of the fee requirements of Sections 1.1102 and 1.1119(e) of the Commission's Rules in connection with the Application.

Respectfully Submitted,

CLOUD PEAK ENERGY RESOURCES LLC,  
DEBTOR-IN-POSSESSION

By: Alan S. Tilles, Esquire

Its Attorney

Shulman Rogers Gandal Pordy & Ecker, P.A.  
12505 Park Potomac Ave., Sixth Floor  
Potomac, Maryland 20854  
(301) 230-5200

Date: June 12, 2019

**ORIGINAL**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

CLOUD PEAK ENERGY INC.,

Debtor.

Tax I.D. No. [REDACTED]

Chapter 11

Case No. 19 – 11047 (KG)

In re

ANTELOPE COAL LLC,

Debtor.

Tax I.D. No. [REDACTED]

Chapter 11

Case No. 19 – 11049 (KG)

In re

ARROWHEAD I LLC,

Debtor.

Tax I.D. No. [REDACTED]

Chapter 11

Case No. 19 – 11050 (KG)

In re

ARROWHEAD II LLC,

Debtor.

Tax I.D. No. [REDACTED]

Chapter 11

Case No. 19 – 11051 (KG)

In re

ARROWHEAD III LLC,

Debtor.

Tax I.D. No. [REDACTED]

Chapter 11

Case No. 19 – 11069 (KG)

Tax I.D. No. 8

Case No. 19 – 11053 (KG)

Tax I.D. No. (

Case No. 19 – 11076 (KG)

Tax I.D. No. 14-0000000000

Case No. 19 – 11071 (KG)

Tax I.D. No. 9

**Case No. 19 – 11055 (KG)**

Tax I.D. No. 9

Case No. 19 – 11061 (KG)

In re

CLOUD PEAK ENERGY LOGISTICS I LLC,

Debtor.

Tax I.D. No. [REDACTED]

Chapter 11

Case No. 19 – 11073 (KG)

In re

CLOUD PEAK ENERGY RESOURCES LLC,

Debtor.

Tax I.D. No. [REDACTED]

Chapter 11

Case No. 19 – 11057 (KG)

In re

CLOUD PEAK ENERGY SERVICES  
COMPANY,

Debtor.

Tax I.D. No. [REDACTED]

Chapter 11

Case No. 19 – 11063 (KG)

In re

CORDERO MINING LLC,

Debtor.

Tax I.D. No. [REDACTED]

Chapter 11

Case No. 19 – 11052 (KG)

In re

CORDERO MINING HOLDINGS LLC,

Debtor.

Tax I.D. No. [REDACTED]

Chapter 11

Case No. 19 – 11075 (KG)

Case No. 19 – 11058 (KG)

Case No. 19 – 11060 (KG)

Case No. 19 – 11054 (KG)

Case No. 19 – 11064 (KG)

Case No. 19 – 11068 (KG)



In re

PROSPECT LAND AND DEVELOPMENT  
LLC,

Debtor.

Tax I.D. No. [REDACTED]

Chapter 11

Case No. 19 – 11065 (KG)

In re

RESOURCE DEVELOPMENT LLC,

Debtor.

Tax I.D. No. [REDACTED]

Chapter 11

Case No. 19 – 11070 (KG)

In re

SEQUATCHIE VALLEY COAL  
CORPORATION,

Debtor.

Tax I.D. No. [REDACTED]

Chapter 11

Case No. 19 – 11072 (KG)

In re

SPRING CREEK COAL LLC,

Debtor.

Tax I.D. No. [REDACTED]

Chapter 11

Case No. 19 – 11066 (KG)

In re

WESTERN MINERALS LLC,

Debtor.

Tax I.D. No. [REDACTED]

Chapter 11

Case No. 19 – 11062 (KG)

In re

YOUNGS CREEK HOLDINGS I LLC,

Debtor.

Tax I.D. No. [REDACTED]

Chapter 11

Case No. 19 – 11059 (KG)

In re

YOUNGS CREEK HOLDINGS II LLC,

Debtor.

Tax I.D. No. [REDACTED]

Chapter 11

Case No. 19 – 11074 (KG)

In re

YOUNGS CREEK MINING COMPANY,  
LLC,

Debtor.

Tax I.D. No. [REDACTED]

Chapter 11

Case No. 19 – 11056 (KG)

**Re: Docket No. 6**

**ORDER (I) DIRECTING JOINT ADMINISTRATION OF  
THE DEBTORS' CHAPTER 11 CASES PURSUANT TO BANKRUPTCY  
RULE 1015(b) AND (II) WAIVING THE REQUIREMENTS OF BANKRUPTCY  
CODE SECTION 342(c)(1) AND BANKRUPTCY RULES 1005 AND 2002(n)**

Upon the motion (the "**Motion**")<sup>1</sup> filed by the above-referenced debtors and debtors in possession (each a "**Debtor**" and collectively, the "**Debtors**") for entry of an order (the "**Order**") consolidating the administration of these chapter 11 cases for procedural purposes only, all as more fully set forth in the Motion and in the First Day Declaration; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having found that this is a core proceeding

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the 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 the Court having reviewed the Motion and First Day Declaration; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is

HEREBY ORDERED THAT:

1. The Motion is **GRANTED** as set forth herein.
2. Any objections to the Motion not resolved or otherwise withdrawn are **OVERRULED**.
3. The above-captioned cases shall be consolidated for procedural purposes only and shall be jointly administered under the case number assigned to Cloud Peak Energy Inc., Case No. 19-11047 (KG) (the “*Lead Case*”), as follows:

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re	)	Chapter 11
CLOUD PEAK ENERGY INC., <i>et al.</i> ,	)	Case No. 19 – 11047 (KG)
Debtors.	)	(Jointly Administered)

4. The caption shall include the following footnote in each pleading filed and notice mailed by the Debtors, listing the Debtors in the chapter 11 cases and the last four digits of their tax identification numbers along with the Debtors' address:

The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers are: Antelope Coal LLC (8952); Arrowhead I LLC (3024); Arrowhead II LLC (2098); Arrowhead III LLC (9696); Big Metal Coal Co. LLC (0200); Caballo Rojo LLC (9409); Caballo Rojo Holdings LLC (4824); Cloud Peak Energy Finance Corp. (4674); Cloud Peak Energy Inc. (8162); Cloud Peak Energy Logistics LLC (7973); Cloud Peak Energy Logistics I LLC (3370); Cloud Peak Energy Resources LLC (3917); Cloud Peak Energy Services Company (9797); Cordero Mining LLC (6991); Cordero Mining Holdings LLC (4837); Cordero Oil and Gas LLC (5726); Kennecott Coal Sales LLC (0466); NERCO LLC (3907); NERCO Coal LLC (7859); NERCO Coal Sales LLC (7134); Prospect Land and Development LLC (6404); Resource Development LLC (7027); Sequatchie Valley Coal Corporation (9113); Spring Creek Coal LLC (8948); Western Minerals LLC (3201); Youngs Creek Holdings I LLC (3481); Youngs Creek Holdings II LLC (9722); Youngs Creek Mining Company, LLC (5734). The location of the Debtors' service address is: 385 Interlocken Crescent, Suite 400, Broomfield, Colorado 80021.

5. The foregoing caption and footnote satisfy the requirements set forth in section 342(c)(1) of the Bankruptcy Code.

6. All pleadings and notices shall be captioned as indicated in paragraphs 3 and 4 of this Order, and all original docket entries shall be made in the Lead Case.

7. A notation substantially similar to the following shall be entered on each of the Debtors' respective dockets (except that of Cloud Peak Energy Inc.) to reflect the joint administration of these chapter 11 cases:

An order has been entered in this case in accordance with Rule 1015(b) of the Federal Rules of Bankruptcy Procedure and Rule 1015-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Delaware directing joint administration for procedural purposes only of the chapter 11 cases of Cloud Peak Energy Inc., Case No. 19 – 11047; Antelope Coal LLC, Case No. 19 – 11049; Arrowhead I LLC, Case No. 19 – 11050; Arrowhead II LLC, Case No. 19 – 11051; Arrowhead III LLC, Case No. 19 – 11069; Big Metal Coal Co. LLC, Case No. 19 – 11053; Caballo Rojo LLC, Case No. 19 – 11076; Caballo Rojo

Holdings LLC, Case No. 19 – 11071; Cloud Peak Energy Finance Corp., Case No. 19 – 11055; Cloud Peak Energy Logistics LLC, Case No. 19 – 11061; Cloud Peak Energy Logistics I LLC, Case No. 19 – 11073; Cloud Peak Energy Resources LLC, Case No. 19 – 11057; Cloud Peak Energy Services Company, Case No. 19 – 11063; Cordero Mining LLC, Case No. 19 – 11052; Cordero Mining Holdings LLC, Case No. 19 – 11075; Cordero Oil and Gas LLC, Case No. 19 – 11058; Kennecott Coal Sales LLC, Case No. 19 – 11060; NERCO LLC, Case No. 19 – 11054; NERCO Coal LLC, Case No. 19 – 11064; NERCO Coal Sales LLC, Case No. 19 – 11068; Prospect Land and Development LLC, Case No. 19 – 11065; Resource Development LLC, Case No. 19 – 11070; Sequatchie Valley Coal Corporation, Case No. 19 – 11072; Spring Creek Coal LLC, Case No. 19 – 11066; Western Minerals LLC, Case No. 19 – 11062; Youngs Creek Holdings I LLC, Case No. 19 – 11059; Youngs Creek Holdings II LLC, Case No. 19 – 11074; Youngs Creek Mining Company, LLC, Case No. 19 – 11056. The docket in Case No. 19-11047 should be consulted for all matters affecting this case.

8. The terms and conditions of this Order are immediately effective and enforceable upon its entry.
9. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.
10. The Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: May 14, 2019  
Wilmington, Delaware

  
\_\_\_\_\_  
THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE