

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

	)	
In re:	)	Chapter 11
	)	
SOUTHCROSS ENERGY PARTNERS,	)	Case No. 19-10702 (MFW)
L.P., <i>et al.</i> ,	)	
Debtors. <sup>1</sup>	)	Jointly Administered
	)	
	)	<u>Requested Hearing Date</u>
	)	October 28, 2019, at 10:30 a.m. (ET)
	)	
	)	<u>Requested Objection Deadline</u>
	)	October 25, 2019, at 4:00 p.m. (ET)

**MOTION TO FILE UNDER SEAL MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) AUTHORIZING THE (A) SALES OF CERTAIN EMISSION REDUCTION CREDITS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES AND (B) PAYMENT OF RELATED FEES AND COMMISSIONS AND (II) GRANTING RELATED RELIEF**

Southcross Energy Partners, L.P. (“**Southcross**”), Southcross Energy Partners GP, LLC, (the “**Southcross GP**”), and Southcross’s wholly owned direct and indirect subsidiaries, each of which is a debtor and debtor in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby submit this *Motion to File Under Seal Motion of Debtors for Entry of an Order (I) Authorizing the (A) Sales of Certain Emission Reduction Credits Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Payment of Related Fees and*

<sup>1</sup> The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors’ mailing address is 1717 Main Street, Suite 5300, Dallas, TX 75201.



*Commissions and (II) Granting Related Relief* (the “**Motion to Seal**”). In support of the Motion to Seal, the Debtors respectfully state as follows:

**Relief Requested**

1. By this Motion to Seal, and pursuant to sections 105(a) and 107(b) of the title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 9018-1(d) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors seek entry of an order, substantially in the form attached hereto as Exhibit A (the “**Proposed Order**” and, if entered, the “**Order**”), (a) authorizing the Debtors to file the *Motion of Debtors for Entry of an Order (I) Authorizing the (A) Sales of Certain Emission Reduction Credits Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Payment of Related Fees and Commissions and (II) Granting Related Relief* (the “**Sale Motion**”)<sup>2</sup> under seal and directing that the Sale Motion shall remain under seal, confidential, and not made available to anyone, except for (i) the Court, (ii) the United States Trustee, (iii) counsel to the debtors prepetition and post-petition lenders, and (iv) any person or entities upon consent of the Debtors; and (b) granting such other and further relief as the Court deems necessary or appropriate.

**Jurisdiction and Venue**

2. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over this Motion to Seal 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.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion.

3. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and, pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by the Court in connection with this Motion to Seal to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

4. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Background**

5. On April 1, 2019 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have continued in possession of their property and have continued to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. No request has been made for the appointment of a trustee or examiner, and no official committee has been appointed in the Chapter 11 Cases.

7. Additional information about the Debtors’ businesses and affairs, capital structure and prepetition indebtedness, and the events leading up to the Petition Date, can be found in the *Declaration of Michael B. Howe in Support of Debtors’ Chapter 11 Proceedings and First Day Pleadings* [D.I. 2], which is incorporated herein by reference.

8. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [D.I. 48] entered by the Court on April 2, 2019 in each of the Chapter 11 Cases.

9. Contemporaneously herewith, the Debtors filed the Sale Motion. The factual background supporting this Motion to Seal is more fully set forth in the Sale Motion, which is fully incorporated herein by reference.

**Basis for Relief Requested**

10. Section 107(b) requires the Court to protect confidential commercial information from public disclosure. 11 U.S.C. § 107(b) (“On request of a party in interest, the bankruptcy court shall . . . protect an entity with respect to a trade secret or confidential research, development, or commercial information . . .”). Once the Court determines that an entity is seeking protection of information that falls within one of the categories enumerated in section 107(b) of the Bankruptcy Code, such as confidential commercial information, “the court is required to protect a requesting interested party and has no discretion to deny the application.” *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994).

11. Bankruptcy Rule 9018 sets forth the procedures by which a party in interest may obtain a protective order authorizing the filing of a document under seal. Bankruptcy Rule 9018 reads in relevant part:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information . . . .

Fed. R. Bankr. P. 9018.

12. Local Rule 9018-1(d) additionally provides, in relevant part, that “[a]ny party who seeks to file documents under seal must file a motion to that effect.” Del. Bankr. L.R. 9018-1(d).

13. The Court has defined “commercial information” as “information which would result in ‘an unfair advantage to competitors by providing them with information as to the commercial operations of the debtor.’” *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006)

(quoting *Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27–28 (2d Cir. 1994)). Commercial information does not need to rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *See Orion Pictures*, 21 F.3d at 28. It need only be confidential and commercial in nature. *See id.* (noting that an interested party only has to show that the information to be sealed is “confidential and commercial” in nature).

14. Moreover, the movant is not required to demonstrate “good cause” to file the relevant document(s) under seal. Rather, if the material falls within one of the categories identified in section 107(b) of the Bankruptcy Code, “the court is required to protect a requesting party and has no discretion to deny the application.” *Id.* at 27.

15. Sufficient cause exists for the Court to grant the relief requested in this Motion to Seal as the Sale Motion contains confidential commercial information. As more fully described in the Sale Motion, the Debtors are seeking authority to sell certain ERCs that are set to expire in 2021 to various potential purchasers. The Debtors were able to secure potential commitments from such buyers for the purchase of the ERCs by agreeing to terms that are in the best interest of the specific purchasers and the Debtors and their estates.

16. The Debtors submit that the Threshold Price (as defined in the Sale Motion) is confidential commercial information. If the Sale Motion is not permitted to be filed under seal, the Debtors will never be able to obtain a purchase price in excess of the Threshold Price. Such public information could harm the Debtors’ estates to the detriment of their economic stakeholders.

17. Furthermore, the Debtors respectfully submit that the Court’s consideration of the information contained in the Sale Motion is important to the Debtors ability to support the relief requested in the Sale Motion. If the Debtors are not permitted to file the Sale Motion under seal,

they will be forced to remove the confidential information and file a revised motion that would not provide the Court with the full record.

18. Lastly, pursuant to Local Rule 9018-1, within three days of the filing of this Motion to Seal, the Debtors will file a publicly viewable redacted version of the Sale Motion.

19. For the foregoing reasons, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A, authorizing the Debtors to file the Sale Motion under seal.

### **Notice**

20. Notice of this Motion to Seal will be provided to the following parties or, in lieu thereof, their counsel, if known: (a) the United States Trustee for the District of Delaware; (b) each of the Debtors' 20 largest unsecured creditors on a consolidated basis; (c) (i) Arnold & Porter Kaye Scholer LLP and (ii) Duane Morris LLP, as counsel to Wilmington Trust, N.A., the administrative agent under Southcross's prepetition secured revolving credit facility, prepetition secured term loan facility, and post-petition credit facility; (d) (i) Willkie Farr & Gallagher LLP and (ii) Young Conaway Stargatt & Taylor, LLP, as counsel to the debtors prepetition and post-petition lender; (e) Debevoise & Plimpton LLP, as counsel to Holdings; and (f) those parties who have filed the appropriate notice pursuant to Bankruptcy Rule 2002 requesting notice of all pleadings filed in the Chapter 11 Cases. A copy of this Motion to Seal and any order approving it will also be made available on the Debtors' case information website located at <http://www.kccllc.net/southcrossenergy>. The Debtors respectfully submit that no further notice is required.

**No Previous Request**

21. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors request entry of an order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and such other and further relief as is appropriate under the circumstances.

Dated: October 18, 2019  
Wilmington, Delaware

MORRIS, NICHOLS ARSHT & TUNNELL LLP

/s/ Eric W. Moats

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*Counsel to the Debtors and Debtors in Possession*





PLEASE TAKE FURTHER NOTICE THAT only objections made in writing and timely filed and received, in accordance with the procedures above, will be considered by the Bankruptcy Court at such hearing.

PLEASE TAKE FURTHER NOTICE THAT PURSUANT TO THE MOTION TO SHORTEN, THE DEBTORS HAVE REQUESTED THAT A HEARING ON THE MOTION TO SEAL BE HELD ON **OCTOBER 28, 2019 AT 10:30 A.M. (ET)** BEFORE THE HONORABLE MARY F. WALRATH, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM #4, WILMINGTON, DELAWARE 19801.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION TO SEAL WITHOUT FURTHER NOTICE OR HEARING.

Dated: October 18, 2019  
Wilmington, Delaware

Respectfully submitted,  
MORRIS, NICHOLS ARSHT & TUNNELL LLP

/s/ Eric W. Moats  
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*Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Order**



§ 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 authority to hear the matters raised in the Motion to Seal pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion to Seal and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Motion to Seal and opportunity for a hearing on the Motion to Seal having been given to the parties listed therein, and it appearing that no other or further notice need be provided; and opportunity for a hearing on the Motion to Seal having been given to the parties listed therein; and the Court having reviewed and considered the Motion to Seal; and the Court having the opportunity to hold a hearing on the Motion to Seal; and the Court having determined that the legal and factual bases set forth in the Motion to Seal establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion to Seal being in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED** that:

1. The Motion to Seal is GRANTED as set forth herein.
2. Pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018 and Local Rule 9018-1(d), the Debtors are authorized to file an unredacted copy of the Sale Motion under seal.
3. Unredacted copies of the Sale Motion shall not be made available to anyone except for this Court, the United States Trustee for the District of Delaware, counsel to the Debtors' prepetition and post-petition lenders, and others upon further Court order.

4. The Debtors are authorized to file on this Court's docket and to serve on all parties a redacted copy of the Sale Motion.

5. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

6. This Court shall retain jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

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THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE