

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

STARION ENERGY INC., *et al.*,¹
Debtors.

Chapter 11

Case No. 18-12608 (MFW)
(Jointly Administered)

Objection Deadline: February 15, 2019 at 4:00 pm (ET)
Hearing Date: February 22, 2019 at 10:30 am (ET)

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**NOTICE OF DEBTORS' MOTION EXTENDING THE EXCLUSIVE PERIODS
DURING WHICH THE DEBTORS MAY FILE AND SOLICIT ACCEPTANCE OF A
PLAN OF REORGANIZATION PURSUANT TO 11 U.S.C. § 1121(d)**

PLEASE TAKE NOTICE that the debtors and debtors in possession (collectively, the "Debtors") have filed the *Debtors' Motion Extending the Exclusive Periods During Which the Debtors May File and Solicit Acceptance of a Plan of Reorganization Pursuant to 11 U.S.C. § 1121(d)*, (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Court").

PLEASE TAKE FURTHER NOTICE that if you oppose the Motion or if you want the court to consider your views regarding the Motion, you must file a written response with the Court detailing your objection or response by **February 15, 2019 at 4:00 p.m. (ET)**. You must also serve a copy of your response upon the following:

¹ The Debtors and the last four digits of their respective tax identification numbers are: Starion Energy Inc. (0943); Starion Energy NY Inc. (4319); Starion Energy PA Inc. (1201). The Debtors' corporate headquarters is located at, and the mailing address for each Debtors is, 751 Straits Turnpike, Suite 2000, Middlebury CT 06762, Attn: Alexandra Isaac, Esq.

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PLEASE TAKE FURTHER NOTICE that the hearing on the Motion is scheduled for **February 22, 2019 at 10:30 a.m. (ET)** before the Honorable Mary F. Walrath in Courtroom No. 4, 5th Floor, in the United States Bankruptcy Court located at 824 N. Market Street, Wilmington, Delaware 19801.

IF YOU DO NOT TAKE THESE STEPS BY THE DEADLINE, THE COURT MAY DECIDE THAT YOU DO NOT OPPOSE THE RELIEF SOUGHT IN THE MOTION AND MAY GRANT OR OTHERWISE DISPOSE OF THE MOTION BEFORE THE SCHEDULED HEARING DATE.

GELLERT SCALI BUSENKELL & BROWN, LLC

BY: */s/ Evan W. Rassman*

Dated: January 22, 2019

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

In re:

STARION ENERGY INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-12608 (MFW)

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Objection Deadline: February 15, 2019 at 4:00 pm (ET)

Hearing Date: February 22, 2019 at 10:30 am (ET)

**DEBTORS' MOTION FOR AN ORDER EXTENDING THE EXCLUSIVE PERIODS
DURING WHICH THE DEBTORS MAY FILE AND SOLICIT ACCEPTANCES OF A
PLAN OF REORGANIZATION PURSUANT TO 11 U.S.C. § 1121(d)**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by and through undersigned counsel, submit Debtors’ Motion for an Order Extending the Exclusive Periods During Which the Debtor may File and Solicit Acceptances of a Plan of Reorganization Pursuant to 11 U.S.C. § 1121(d) (the “Motion”). In support of the Motion, the Debtors respectfully state as follows:

BACKGROUND

1. On November 14, 2018 (the “Petition Date”), the Debtors commenced voluntary cases (“Chapter 11 Cases”) under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their property as debtors-in-possession as authorized by sections 1107(a) and 1108 of the Bankruptcy Code. As of the date of this Motion, no committee, trustee or examiner has been appointed in these Chapter 11 Cases.

2. The events leading up to the Petition Date and the facts and circumstances

¹ The Debtors and the last four digits of their respective tax identification numbers are: Starion Energy Inc. (0943); Starion Energy NY Inc. (4319); Starion Energy PA Inc. (1201). The Debtors’ corporate headquarters is located at, and the mailing address for each Debtor is, 751 Straits Turnpike, Suite 2000, Middlebury CT 06762, Attn: Alexandria Isaac, Esq.

supporting the relief requested herein are set forth in the Declaration of Thomas Stiner in Support of Debtors' Petitions and First Day Motions. Additional facts in support of the specific relief sought are set forth herein.

3. On the Petition Date, the Debtors filed their schedules of assets and liabilities and statement of financial affairs (collectively, the "Schedules"). The Schedules were amended on December 5, 2018 [D.I. 55].

4. Pursuant to section 1121(d) of the Bankruptcy Code, the Debtors' exclusive period to file a plan of reorganization expires March 14, 2019. The Debtors' exclusive solicitation period expires May 13, 2019.

JURISDICTION

5. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The statutory basis for the relief requested herein is Bankruptcy Code section 1121(d).

RELIEF REQUESTED

7. By this Motion, the Debtors seek the entry of an order: (i) further extending the Plan Period (defined below) until June 14, 2019; and the Solicitation Period (defined below) until August 14, 2019. If granted, the extension of the Exclusive Periods (defined below) will be without prejudice to: (i) the right of the Debtors to seek further extensions of the Exclusive Periods; or (ii) the right of any party in interest to seek to reduce the Exclusive Periods for cause.

BASIS FOR RELIEF

8. Bankruptcy Code section 1121(b) provides for an initial 120-day period after the

Petition Date (the “Plan Period”) within which a debtor has the exclusive right to file a plan or plans of reorganization. Bankruptcy Code section 1121(c) further provides for an initial 180-day period after the Petition Date (the “Solicitation Period” and, together with the Plan Period, the “Exclusive Periods”) within which a debtor has the exclusive right to solicit and obtain acceptances of a plan filed by such debtor during the Plan Period. Bankruptcy Code section 1121(d) provides that the Court may increase or reduce the Exclusive Periods.

9. Since the Petition Date, the Debtors have worked diligently to restructure their operations so as to formulate a viable plan of reorganization. Among other things, the Debtors have worked diligently to obtain financing to fund their chapter 11 cases and have worked to ensure a smooth transition into chapter 11 for their customers and employees, and have established a bar date by which creditors of the estates may submit their claims.

10. Accordingly, the Debtors request that the Court (a) extend the Plan Period through and including June 14, 2019 and the Solicitation Period through and including August 14, 2019; and (b) prohibit any party, other than the Debtors, from filing a competing plan and/or soliciting acceptances of any such competing plan during the extended Exclusive Periods.

APPLICABLE AUTHORITY

11. Under Bankruptcy Code section 1121(d), the Court may extend the Exclusive Periods for cause. Specifically, Bankruptcy Code section 1121(d) provides:

[O]n request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause increase the 120-day period or the 180- day period referred to in this section.

11 U.S.C. § 1121(d)(l).

12. Courts have identified several key factors relevant to a determination of whether cause exists under Bankruptcy Code section 1121(d), including the following:

- a. The size and complexity of a debtor's case;
- b. The amount of time that has elapsed since the debtor filed its bankruptcy case;
- c. Whether unresolved contingencies exist that affect the debtor's ability to reorganize;
- d. The debtor's progress in resolving issues facing its estate; and
- e. Whether an extension of time will harm the debtor's creditors or other interested parties.

See In re Dow Corning Corp., 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997); In re Express One Int'l, Inc., 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); In re Gibson & Cushman Dredging Corp., 101 B.R. 405, 409 (E.D.N.Y. 1989); In re McLean Indus., Inc., 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987).

13. In determining whether to grant a requested extension of exclusivity, courts also consider whether a debtor has had a reasonable opportunity to negotiate an acceptable plan with various interested parties and to prepare adequate financial and nonfinancial information concerning the ramifications of any proposed plan for disclosure to creditors. See McLean, 87 B.R. at 833-34; In re Texaco, Inc., 76 B.R. 322, 327 (Bankr. S.D.N.Y. 1987).

14. In evaluating whether an extension under Bankruptcy Code section 1121(d) is warranted, courts are given maximum flexibility to review the particular facts and circumstances of each case. See In re Amko Plastics, Inc., 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996) (“[A]pplying the ‘flexibility’ in dealing with the question of extension of exclusivity which the cases suggest . . ., we hold that debtor has shown cause for the extension.”); In re Pub. Serv. Co., 88 B.R. 521, 534 (Bankr. D.N.H. 1988) (“[T]he legislative intent [is] to promote maximum flexibility.”); H.R. Rep. No. 95-595, at 232 (1978) (“[T]he bill allows the flexibility for individual cases that is unavailable

today.”), reprinted in 1978 U.S.C.C.A.N. 5963, 6191.

15. Here, granting the Debtors a limited extension of the Exclusive Periods will allow ample time for the Debtors to review their outstanding claims and create a plan for reorganization, thereby maximizing value for creditors and progressing these chapter 11 cases. Accordingly, the facts and circumstances of these cases, overwhelmingly establishes cause to grant the Debtors an extension of the Exclusive Periods.

A. Size and Complexity of these Chapter 11 Cases and Good Faith Progress Toward Reorganization and Development of a Consensual Plan.

16. The Debtors respectfully submit that the size and complexity of their cases, together with the good progress made to date towards an orderly reorganization, provides sufficient cause for a 90-day extension of its Exclusive Periods. Since the Petition Date, the Debtors and their professionals have been working diligently toward the ultimate goal of emerging from chapter 11 as expeditiously as possible and have worked to develop a viable plan of reorganization that affords its creditors favorable treatment and an appropriate recovery on account of their claims.

17. As this Court is aware, since the Petition Date, an order has been entered by this Court establishing a general bar date of February 28, 2019 and a governmental bar date of May 13, 2019. Additionally, contemporaneously with this Motion, the Debtors are filing a supplemental motion seeking to set a bar date of May 13, 2019 for consumer customers to file claims against the estates, if any. Furthermore, the Debtors are working to set a meeting with its largest potential creditor in an attempt to resolve the outstanding issues, however, such meeting, tentatively, will likely not take place until late February 2019.

18. In order to prepare a confirmable plan, the Debtors must know the full extent of claims against their estates in order to prepare their liquidation analysis. Accordingly, an extension of the Exclusive Periods will provide the Debtors with a meaningful opportunity to shift focus to

finalizing and filing a consensual plan of reorganization.

19. Accordingly, the complexity of the issues that the Debtors have had to contend with in the early days of this case - and their efforts to date in that regard - demonstrate that an extension of the Exclusive Periods is appropriate.

B. The Debtors are Paying their Debts as They Come Due.

20. The Debtors are paying their bills as they become due in the ordinary course of business. Through prudent business decisions and cash management, the Debtors have sufficient resources to meet their required post-petition payment obligations in accordance with the DIP Budget, and are managing their business effectively and preserving the value of their assets for the benefit of creditors. Accordingly, this factor militates in favor of an extension of the Exclusive Periods.

C. The Debtors have Demonstrated Reasonable Prospects for a Viable Plan.

21. As noted above, Debtors are prepared to move forward and focus their efforts on preparing a plan of reorganization that will afford creditors favorable treatment and an appropriate recovery on account of their claims. Accordingly, because there exists reasonable prospects for a viable plan, an extension of the Exclusive Periods is appropriate.

D. Little Time Has Elapsed in This Case.

22. Less than three (3) months have elapsed since the Petition Date and this is the Debtors' first request for an extension of the Exclusive Periods. During the time since the Petition Date, the Debtors have accomplished a great deal. In addition to working to stabilize business operations, addressing customer and vendor issues, resolving various disputes with the Attorney General of the Commonwealth of Massachusetts, including litigating a motion to dismiss these Chapter 11 Cases, the Debtors also have focused their efforts on other matters critical to its

reorganization efforts including, among other things, preparing and filing their Schedules and preparing for various contested hearings. The Debtors anticipate that with an extension of the Exclusive Periods, it will be able to continue its progress and move forward to a successful reorganization.

E. Unresolved Contingencies Still Exist in the Chapter 11 Case.

23. Because a number of unresolved contingencies still exist in these Chapter 11 Cases, an extension of the Exclusive Periods is appropriate. In that context, there remain many open issues, including, among other things, the extent of value that will be available for creditors, and determinations as to whether to assume or reject executory contracts and unexpired leases. Accordingly, the limited extension of exclusivity sought here is appropriate to allow events to unfold and to permit the Debtors to resolve these contingencies in a timely fashion.

F. The Debtors Require an Extension of the Exclusive Periods to Maximize Value and Achieve a Successful Reorganization.

24. The requested extension of the Exclusive Periods is neither an attempt to pressure creditors to accede to the Debtors' demands nor a negotiation tactic. To the contrary, as described above, the Debtors have been working to resolve critical issues in these cases for the ultimate benefit of their estates and creditors, while at the same time resolving attacks from the Commonwealth. Under the circumstances, the Debtors do not believe any party would be prejudiced by the extension of the Debtors' Exclusive Periods. Rather, the extension of exclusivity will permit the Debtors to complete their efforts in closing the sale and thereby maximize value of the Debtors' estates for the benefit of all stakeholders.

NOTICE

A true and correct copy of this Motion, as well as the Notice filed concurrently therewith, will be given to: (i) the United States Trustee for the District of Delaware; and (ii) all parties

entitled to notice pursuant to Bankruptcy Rule 2002. The Debtors submit that no other or further notice need be provided.

WHEREFORE, the Debtors request the Court enter an order substantially in the form attached hereto: (i) extending the Plan Period through and including June 14, 2019 and the Solicitation Period through and including August 14, 2019; and (ii) granting such other and further relief as is just and proper.

Dated: January 22, 2019
Wilmington, Delaware

GELLERT SCALI BUSENKELL & BROWN, LLC

/s/ Evan W. Rassman

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FOR THE DISTRICT OF DELAWARE**

In re:

STARION ENERGY INC., *et al.*,

Debtors.

Chapter 11

Case No. 18-12608 (MFW)

(Jointly Administered)

RE: D.I. _____

**ORDER GRANTING DEBTORS' MOTION FOR AN ORDER
EXTENDING THE EXCLUSIVE PERIODS DURING WHICH THE
DEBTORS MAY FILE AND SOLICIT ACCEPTANCES OF A PLAN
OF REORGANIZATION PURSUANT TO 11 U.S.C. § 1121(d)**

Upon the Debtors' Motion for an Order Extending the Exclusive Periods During Which the Debtors May File and Solicit Acceptances of a Plan of Reorganization Pursuant to 11 U.S.C. § 1121(d) (the "Motion"); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided under the circumstances, and it appearing that no other or further notice need be provided; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors and all parties-in-interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is:

1. ORDERED that the relief requested in the Motion is hereby GRANTED as provided herein; and it is further

2. ORDERED that the Plan Period¹ is hereby extended through and including June 14, 2019 and the Solicitation Period is hereby extended through and including August 14, 2019; and it is further

3. ORDERED that nothing herein shall be construed to limit the Debtors' right to seek further extensions of time under 11 U.S.C. § 1121; and it is further

4. ORDERED that the Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

¹ herein defined shall have the same meaning ascribed to them as in the Motion.