

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)	
)	
SIERRA CLUB, ENVIRONMENTAL)	
LAW AND POLICY CENTER,)	
PRAIRIE RIVERS NETWORK, and)	
CITIZENS AGAINST RUINING THE)	
ENVIRONMENT)	
)	PCB No-2013-015
Complainants,)	(Enforcement – Water)
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondents)	

NOTICE OF ELECTRONIC FILING

To: Attached Service List

PLEASE TAKE NOTICE that on January 10, 2013, I electronically filed with the Clerk of the Illinois Pollution Control Board: **CITIZEN GROUPS’ MOTION FOR AN EXTENSION OF TIME TO RESPOND TO MWG’S MOTION TO DISMISS UNTIL THE BANKRUPTCY COURT LIFTS THE AUTOMATIC STAY OR THAT STAY OTHERWISE EXPIRES** and a **PROPOSED ORDER**, a copies of which is served on you along with this notice.

Respectfully submitted,

Jennifer L. Cassel
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Environmental Law & Policy Center
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Dated: Jan 10, 2013

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CITIZEN GROUPS’ MOTION FOR AN EXTENSION OF TIME TO RESPOND TO MWG’S MOTION TO DISMISS UNTIL THE BANKRUPTCY COURT LIFTS THE AUTOMATIC STAY OR THAT STAY OTHERWISE EXPIRES

NOW COME the Complainants, Sierra Club, Environmental Law and Policy Center (“ELPC”), Prairie Rivers Network, and Citizens Against Ruining the Environment (collectively, “Citizens Groups”), pursuant to 35 Ill. Adm. Code 101.500(d) and 101.522, and request that the Board extend the deadline for Citizens Groups to respond to Respondent Midwest Generation LLC (“MWG”)’s motion to dismiss until the Bankruptcy Court presiding over the Chapter 11 bankruptcy proceedings of Respondent Midwest Generation, LLC (“MWG”) lifts the automatic stay applicable to this case, or the automatic stay otherwise expires. In support of this motion, Citizens Groups state as follows:

1. On December 17, 2012, MWG, and 16 affiliated entities, filed a petition in the United States Bankruptcy Court for the Northern District of Illinois seeking protection under Chapter 11 of the United States Bankruptcy Code.

Electronic Filing - Received, Clerk's Office : 01/10/2013

2. Pursuant to 11 U.S.C. § 362(a)(1), the filing of a bankruptcy petition “operates as a stay, applicable to all entities, of the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced” before the filing of the bankruptcy petition.

3. No exception to the automatic stay provisions of the Bankruptcy Code applies directly to this pending action against MWG. *See, e.g., In re Chateaugay Corp.*, 118 B.R. 19 (Bankr. S.D.N.Y. 1990) (citizen environmental enforcement action not subject to the bankruptcy code’s exception to the automatic stay for governmental units to enforce police and regulatory power). *See also Hilles Motors, Inc. v. Hawaii Auto Dealers’ Association*, 997 F.2d 581 (9th Cir. 1993) (requiring courts to give exceptions to the automatic stay provisions in the bankruptcy code the narrowest possible construction to afford debtors the broadest possible protection through the automatic stay).

4. The Environmental Law & Policy Center first brought the bankruptcy case to the attention of the Illinois Pollution Control Board by letter dated December 21, 2012, which was electronically docketed as “comments” on that date.

5. On December 28, 2012, Citizens Groups and MWG filed separate notices advising the Board of MWG’s bankruptcy and informing this Board that the automatic stay in bankruptcy applies to the above-captioned proceeding. *See Notice of a Bankruptcy Stay for Edison Mission Energy Et Al*, at 2 (filed Dec. 28, 2012); *Citizen Groups’ Notice of Pending Bankruptcy and Motion for an Extension of Time to Respond to Respondent’s Motion to Dismiss* (filed Dec. 28, 2012). In their Notice and Motion, Citizen Groups also made an unopposed request for an extension of time until January 11, 2013, to respond to Respondent’s Motion to Dismiss. The Hearing Officer granted that motion on January 8, 2013.

6. A motion for an extension of time may be granted for good cause shown. 35 Ill. Adm. Code 101.522. The Board has “wide discretion in determining what constitutes good cause.” *People v. Env'tl. Health and Safety, Inc.*, PCB 05-51, 2006 Ill. ENV LEXIS 198, *6 (Apr. 6, 2006).

7. Citizens Groups will be prejudiced if the requested extension is not granted because responding to MWG’s pending motion to dismiss in this proceeding may well be construed as the continuation of an action, commenced prior to the filing of a bankruptcy petition, against MWG, a debtor, in violation of the bankruptcy code’s automatic stay provisions. Violation of the bankruptcy code’s automatic stay provisions may subject the violator to penalties. *See, e.g., Paloian v. Grupo Serla, S.A. de C.V.*, 433 B.R. 19, 37-41 (N.D. Ill. 2010).

WHEREFORE, Petitioners request that the Board grant Citizens Groups’ request for an extension of time for the Citizens Groups to respond to MWG’s pending motion to dismiss until after the Bankruptcy Court presiding over the bankruptcy proceedings of Respondent MWG either lifts the automatic stay applicable to this case, or the automatic stay otherwise expires.

Respectfully submitted,



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Attorney for CARE

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PROPOSED ORDER

It is hereby ORDERED that:

- Citizen Groups’ Motion for an Extension of Time to Respond to MWG’s Motion to Dismiss Until the Bankruptcy Court Lifts the Automatic Stay or That Stay Otherwise Expires is GRANTED.
- The automatic stay provided by the U.S. bankruptcy code applies to the above-captioned matter. Therefore, no actions may be taken in this matter until the automatic stay is lifted or otherwise expires.

Signed: _____

On this the __ day of __, 2013.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **CITIZEN GROUPS' MOTION FOR AN EXTENSION OF TIME TO RESPOND TO MWG'S MOTION TO DISMISS UNTIL THE BANKRUPTCY COURT LIFTS THE AUTOMATIC STAY OR THAT STAY OTHERWISE EXPIRES** and a **PROPOSED ORDER** were served to all parties of record listed below by United States Mail, postage prepaid, on January 10, 2013.

/s/ Erin Morse

Erin Morse

Legal Assistant

Environmental Law and Policy Center

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PCB 2013-051 SERVICE LIST:

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